

SECURITIES AND FUTURES ACT  
(CHAPTER 289, SECTIONS 2(1), ~~84(3)~~, ~~85(1) AND (4)~~, ~~86(3)~~, ~~87-90(2)~~, ~~91~~, ~~93(1)~~,  
~~94(1)~~, ~~95(1)~~, ~~96(2)~~, ~~97(2)~~, ~~97A(3)~~, ~~97B(1)~~, ~~FO-97-99(4)~~, ~~99A(1) AND (4)~~,  
[~~99AC(2)~~, ~~99C(1)~~,] ~~99D(2)~~, (4) AND (8), ~~99E(1)~~, (3) AND (5), ~~99F(1) AND (3)~~,  
~~99H(1)~~, (4) AND (5), ~~99K~~, ~~99L(2) AND (5)~~, ~~99M(1)~~, ~~100(1)~~, ~~101C(2)~~, ~~102(4) AND~~  
~~(5)~~, ~~104~~, ~~118-120~~, ~~123-128~~, ~~337(1)~~, ~~339(3) AND 341~~)  
SECURITIES AND FUTURES (LICENSING AND CONDUCT OF BUSINESS)  
REGULATIONS

**Rg 10**

**G.N. No. S 457/2002**

**REVISED EDITION 2004**

(29th February 2004)

[1st October 2002;

1st April 2003: – regulation 54 ]

PART I

PRELIMINARY

Regulation

1. Citation
2. Definitions

PART II

LICENSING, REPRESENTATIVE NOTIFICATION AND RELATED MATTERS

3. Forms
- 3A. Lodgment of documents and undertaking of responsibilities for representative
- 3B. Provisional representative
- 3C. Temporary representative
- 3D. *[Deleted]*
4. Register of interests in ~~specified products~~~~securities~~
- 4A. Place at which register is kept
5. Change of particulars and additional regulated activity of representative
6. Fees
- 6A. Manner of application for capital markets services licence
7. Deposit to be lodged in respect of capital markets services licence to deal in ~~capital markets products that are specified products~~~~securities~~
8. Return of deposit
9. Lapsing of capital markets services licence
- 9A. Cessation of status of appointed representative
10. *[Deleted]*
11. Cessation of business by holder
- 11A. Variation of capital markets services licence

## Regulation

- 11B. Lodgment of particulars of cessation
- 12. Application for appointment of chief executive officer and director
- 13. Duties of holder of capital markets services licence
- 13A. Criteria for determining if chief executive officer or director of holder of capital markets services licence has breached duties
- 13B. Duties of holder of capital markets services licence for regulated activity of fund management
- 13C. Criteria for determining if chief executive officer or director of holder of capital markets services licence for fund management has breached duties
- 13D. Risk mitigation
- 14. Exemptions
- 14A. Holders of capital markets services licences and representatives, etc., to be fit and proper persons

## PART III

## CUSTOMER'S MONEYS AND ASSETS

*Division 1 — Definitions*

- 15. Definitions of this Part

*Division 2 — Customer's Moneys*

- 16. Money received on account of customer
- 17. Maintenance of trust account with specified financial institutions
- 17A. Suitability of specified financial institutions
- 18. Notification and acknowledgment from specified financial institutions
- 19. Customer's money held with a clearing house, etc.
- 20. Investment of moneys received on account of customers
- 20A. Title transfer arrangement of customer's moneys
- 21. Withdrawal of money from trust account
- 22. Interest arising from trust account, etc.
- 23. Placement of licensee's own money in trust account
- 24. No effect on lawful claims or liens

*Division 3 — Customer's Assets*

- 25. Application of this Division
- 26. Duties of holder on receipt of customer's assets
- 27. Maintenance of custody account with specified custodians
- 28. Notification and acknowledgment from specified custodians
- 29. Suitability of custodian
- 30. Customer's assets held with clearing house, etc.
- 31. Customer agreement
- 32. Custody agreement
- 33. Lending of customer's specified productssecurities
- 34. Mortgage of customer's assets

## Regulation

- 34A. Title transfer arrangements on customer's assets
- 35. Withdrawal of customer's assets
- 36. No effect on lawful claims or liens

*Division 4 — Miscellaneous*

- 37. ~~Daily-Computation~~ computation for trust accounts and custody accounts
- 38. Customer's moneys and assets held by clearing house

## PART IV

## CONDUCT OF BUSINESS

- 39. Books of holder of capital markets services licence
- 40. Provision of statement of account to customers
- 41. Documentation required by Authority, approved exchange or approved clearing house ~~futures exchange or clearing house~~
- 42. Contract notes
- 43. Limits for unsecured credit and credit facilities
- 44. Priority of customers' orders
- 45. Specified products ~~Securities~~ borrowing and lending
- 46. Advertisement
- 46A. Certain representations prohibited
- 47. Trading standards
- 47A. Disclosure of certain interests in respect of underwriting agreement
- 47B. Dealing in specified products ~~securities~~ as principal
- 47BA. Dealing with certain customers as principal
- 47C. Trading against customer
- 47D. Cross-trading
- 47DA. General risk disclosure requirements
- 47E. Risk disclosure by certain persons

## PART V

## DEALING IN GOVERNMENT SECURITIES

- 48. Compliance with Rules and Market Practices

## PART VI

## MISCELLANEOUS

- 49. *[Deleted]*
- 50. *[Deleted]*
- 50A. *[Deleted]*
- 51. Position limit
- 52. Non-applicability of section 339 (2) of Act under certain circumstances
- 53. *[Deleted]*

## Regulation

- 54. Banks, merchant banks and finance companies
- 54A. Registered Fund Management Companies
- 55. Offences

## PART VII

## TRANSITIONAL PROVISIONS

- 56. Persons exempted from holding capital markets services licence under paragraph 5(1)(d) of Second Schedule in force before 7th August 2012
- 57. to 60. *[Repealed]*
- 61. Persons carrying on business in providing credit rating services immediately before 17th January 2012  
First Schedule— *[Repealed]*  
The Schedules

[1st October 2002; 1st April 2003: – regulation 54]

## PART I

## PRELIMINARY

**Citation**

1. These Regulations may be cited as the Securities and Futures (Licensing and Conduct of Business) Regulations.

**Definitions**

2. In ~~this~~ **these** Regulations, unless the context otherwise requires —

“advertisement”, in relation to a holder of a capital markets services licence, means a dissemination or conveyance of information, or an invitation or solicitation, in respect of any regulated activity that the holder is licensed to carry on business in, by any means or in any form, including by means of —

- (a) publication in a newspaper, magazine, journal or other periodical;
- (b) display of posters or notices;
- (c) circulars, handbills, brochures, pamphlets, books or other documents;
- (d) letters addressed to individuals or bodies;
- (e) photographs or cinematograph films; or
- (f) sound broadcasting, television, the Internet or other media;

“bond” includes —

- (a) any note, bond or Treasury Bill;
- (b) an option in respect of any note, bond or Treasury Bill; and
- (c) such other securities or class of securities as the Authority may from time to time, by a guideline issued by the Authority, determine;

["contracts for differences" means any ~~right under any~~ over-the-counter derivatives contract that allows the customer to open a position and which is closed out or terminated by the entry into the opposite position. For the purposes hereof, "open a position" means to enter into a contract whose value is determined by reference to ~~the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in~~

- (a) the value or price of any securities or the value of a currency in relation to another currency ~~amount of one or more underlying things~~;
- (b) the value or price ~~amount~~ of any group of any such securities ~~one or more underlying things~~; or
- (c) the value of an index of any such securities or of a currency index in relation to an agreed value ~~one or more underlying things~~;

*[With our proposed deletion of "specified uncleared derivatives contract", this definition is no longer needed in the SF(LCB)R. However, as it will be needed for the revised Securities and Futures (Financing and Margin Requirements for Holders of Capital Markets Services Licences) Regulations ("SF(FMR)R") and the new Securities and Futures (Margin Requirements for Exempt Financial Institutions) Regulations, we have amended the definition for your reference.]*

*"Contracts for differences" ("CFDs") under the current Securities and Futures Act ("SFA") means only CFDs on securities. Currency CFDs currently fall within "leveraged foreign exchange trading". As currency CFDs will no longer fall within the revised definition of "leveraged foreign exchange trading" under the amended SFA, the definition of CFDs should be amended to include currency and currency indices in addition to securities and securities indices. However, there is no justification for expanding it to include any other underlying things.*

*We also note that MAS in its Response on the Consultation Paper on the Review of the Regulatory Framework for Unlisted Margin Derivatives Offered to Retail Investors dated 14 March 2014 ("2014 Unlisted Margin Derivatives Response") has stated that it will not extend the margining requirements for the offer of CFDs on securities to other unlisted derivatives on securities. However, as the proposed definition of CFDs is so broad, all OTC derivatives contracts will be CFDs. Thus, contrary to MAS's position in the 2014 Unlisted Margin Derivatives Response, if the proposed definition is retained, not only OTC equity derivatives but all OTC derivatives will be CFDs and thus subject to the margin requirements in the SF(FMR)R.]*

“electronic record” has the same meaning as in section 2 of the Electronic Transactions Act (Cap. 88);

“Government securities” means securities issued or proposed to be issued by the Government, and includes —

- (a) any debenture, stock or bond issued or proposed to be issued by the Government;
- (b) any right or option in respect of any debenture, stock or bond referred to in paragraph (a);
- (c) book-entry Government securities as defined in section 2 of the Development Loan (1987) Act (Cap. 81A) or section 2 of the Government Securities Act (Cap. 121A); and
- (d) book-entry Treasury Bills as defined in section 2 of the Local Treasury Bills Act (Cap. 167);

“guideline issued by the Authority” means a guideline issued by the Authority under section 321 of the Act;

“Internet-based trading platform” means an order management system for the purpose of dealing in ~~capital markets products securities, trading in futures contracts or carrying out leveraged foreign exchange trading~~, offered by a holder of a capital markets services licence or a person who is exempt from holding a capital markets services licence pursuant to section 99(1)(a), (b) or (c) of the Act, which is accessible through the Internet, and is not limited to accredited investors, expert investors and institutional investors;

[S 170/2013 wef 28/03/2014]

“listed derivatives contract” means an exchange-traded derivatives contract or a derivatives contract that is not an uncleared derivatives contract;

“MAS’s Margin Guidelines” has the meaning set out in regulation 15(3)(c);

~~“over-the-counter derivatives contract” means a derivatives contract which is not an exchange-traded derivatives contract;~~

~~“position”, in relation to a derivatives contract or spot foreign exchange contract for the purposes of leveraged foreign exchange trading, means a derivatives contract or spot foreign exchange contract for the purposes of leveraged foreign exchange trading means a futures contract or a leveraged foreign exchange transaction which is still outstanding, and which has not been liquidated —~~

- ~~(a) by an off-setting against any transaction for purposes of set-off;~~
- ~~(b) by delivery of the underlying thing of the derivatives contract commodity underlying the futures contract or leveraged foreign exchange transaction;~~
- ~~(ba) by delivery of the currency underlying the spot foreign exchange contract for the purposes of leveraged foreign exchange trading;~~

- (c) by settlement of the derivatives contract or spot foreign exchange contract for the purposes of leveraged foreign exchange trading ~~futures contract or leveraged foreign exchange transaction~~ in accordance with the business rules or practices of an organised market, a clearing facility or a ~~futures exchange or a clearing house or the practices of a futures market~~, a foreign exchange market, or a ~~recognised trading system provider~~ as the case may be; or
- (d) in the case of a futures derivatives futures contract, by substituting the futures derivatives futures contract with any cash commodity; ~~or~~
- ~~(e) in the case of a spot leveraged foreign exchange contract for the purposes of leveraged foreign exchange trading transaction, by substituting the spot leveraged foreign exchange contract transaction for a futures contract; [As the revised definition of “leveraged foreign exchange trading” is limited to spot foreign exchange contracts, this paragraph is no longer relevant.]~~

“quarter”, in relation to a calendar year, means a period of 3 months ending on the last day of March, June, September or December in that calendar year;

“Registered Fund Management Company” means a corporation which is exempted from holding a capital markets services licence under paragraph 5(1)(i) of the Second Schedule;

[S 385/2012 wef 07/08/2012]

“Registered Futures Broker” means a corporation which is exempted from holding a capital markets services licence under paragraph 3(1)(d) of the Second Schedule;

“Registered Over-the-counter Derivatives Broker” means a corporation which is exempted from holding a capital markets services licence under paragraph 3A(1)(e) of the Second Schedule;

“Rules and Market Practices” means the Rules and Market Practices (including any amendment and modification thereto) of the Singapore Government Securities Market as promulgated from time to time by the Singapore Government Securities Market Committee of the Singapore Government Securities Market; . -

~~“specified uncleared derivatives contract” means an uncleared derivatives contract that is not~~

~~(a) a contract for differences; or~~

~~(b) an uncleared derivatives contract of which the underlying thing is a currency or a currency index.~~

“title transfer collateral arrangement” has the meaning set out in regulation 15(3)(b);

“uncleared derivatives contract” means an over-the-counter derivatives contract that is not, or is not intended to be, cleared or settled by a person operating a clearing facility through which parties to the ~~a~~ contract substitute, through novation or

otherwise, the credit of the person operating the clearing facility for the credit of the parties.

## PART II

### LICENSING, REPRESENTATIVE NOTIFICATION AND RELATED MATTERS

*[S 709/2010 wef 26/11/2010]*

#### Forms

3.—(1) The forms to be used for the purposes of these Regulations are those set out at the Authority's Internet website at <http://www.mas.gov.sg> (under "Regulations and Financial Stability", "Regulations, Guidance and Licensing", "Securities, Futures and Fund Management"), and any reference in these Regulations to a numbered form shall be construed as a reference to the current version of the form bearing the corresponding number which is displayed at that website.

*[S 385/2012 wef 07/08/2012]*

(2) Any document required to be lodged with the Authority under any provision of Parts IV to VI of the Act or these Regulations shall be lodged in the relevant form and in the manner specified in the website referred to in paragraph (1), or in such other manner as the Authority may specify from time to time.

*[S 503/2012 wef 19/11/2012]*

(3) All forms used for the purposes of these Regulations shall be completed in the English language and in accordance with such directions as may be specified in the form or by the Authority.

(4) The Authority may refuse to accept any form if —

(a) it is not completed or lodged in accordance with this regulation; or

(b) it is not accompanied by the relevant fee referred to in regulation 6.

(5) Where strict compliance with any form is not possible, the Authority may allow for the necessary modifications to be made to that form, or for the requirements of that form to be complied with in such other manner as the Authority thinks fit.

*[S 373/2005 wef 01/07/2005]*

#### Lodgment of documents and undertaking of responsibilities for representative

3A.—(1) A notice of intent under section 99H(1)(a) of the Act by a principal to appoint an individual as an appointed representative in respect of a type of regulated activity and a certificate under section 99H(1)(b) of the Act by the principal as to the fitness and propriety of the individual to be so appointed shall be in Form 3A.

(2) A notice of intent under section 99H(1)(a) of the Act by a principal to appoint an individual as a provisional representative in respect of a type of regulated activity and a



certificate under section 99H(1)(b) of the Act by the principal as to the fitness and propriety of the individual to be so appointed shall be in Form 3B.

(3) A notice of intent under section 99H(1)(a) of the Act by a principal to appoint an individual as a temporary representative in respect of a type of regulated activity and a certificate under section 99H(1)(b) of the Act by the principal as to the fitness and propriety of the individual to be so appointed shall be in Form 3C.

(4) A principal who lodges with the Authority the certificate under section 99H(1)(b) of the Act shall retain copies of all information and documents which it relied on in giving the certificate for a period of 5 years from the date of lodgment.

(5) For the purposes of section 99H(1)(c) of the Act, a principal shall undertake all of the following responsibilities in relation to its representative:

(a) to put in place measures to properly supervise the activities and conduct of the representative, including measures to ensure that all obligations assumed and liabilities incurred by him are properly fulfilled, whether actual or contingent and howsoever arising, in relation to carrying out any regulated activity;

(b) to put in place measures, including proper training, to ensure that the representative understands and complies with all Singapore laws that are relevant to the regulated activity carried out by him;

(c) to ensure that the representative is accompanied at all times by any of the persons referred to in paragraph (6) when meeting any client or member of the public in the course of carrying on business in any regulated activity;

(d) to ensure that the representative sends concurrently to any of the persons referred to in paragraph (6) all electronic mail that he sends to any client or member of the public in the course of carrying on business in any regulated activity;

(e) to ensure that the representative does not communicate by telephone with any client or member of the public in the course of carrying on business in any regulated activity, other than by telephone conference in the presence of any of the persons referred to in paragraph (6).

(6) The persons referred to in paragraph (5)(c), (d) and (e) are —

(a) an appointed representative of the principal;

(b) a director of the principal approved under section 96 of the Act;

(c) an officer of the principal whose primary function is to ensure that the carrying on of business in the regulated activity in question complies with the laws and requirements of the Authority applicable to the regulated activity in question;

(d) an officer of the principal appointed by the principal to supervise the representative in carrying on of business in the regulated activity in question.

(7) In paragraph (5)(c), (d) and (e), “client or member of the public” excludes one who is an accredited investor, ~~an~~ expert investor or ~~an~~ institutional investor.

**Provisional representative**

**3B.**—(1) The period which the Authority may specify in the public register of representatives under section 99E(2) of the Act as the period which any named individual can be a provisional representative in respect of any type of regulated activity shall not exceed 3 months from the date his name is entered in the register as a provisional representative.

(2) For the purpose of section 99E(5) of the Act, where a provisional representative in respect of a type of regulated activity has satisfied the examination requirements specified for that type of regulated activity, his principal shall inform the Authority of that fact —

(a) by serving on the Authority a duly completed Form 3D; and

(b) before the expiry of the period specified against his name in the public register of representatives under section 99E(2) of the Act.

(3) For the purposes of section 99M(1)(t)(i) and (ii) of the Act, the Authority may refuse to enter the name and other particulars of an individual in the public register of representatives as a provisional representative in respect of a type of regulated activity, if —

(a) he is not or was not previously licensed, authorised or otherwise regulated as a representative in relation to a comparable type of regulated activity in a foreign jurisdiction for a continuous period of at least 12 months; or

(b) the period between the date of his ceasing to be so licensed, authorised or regulated in a foreign jurisdiction and the date of his proposed appointment as a provisional representative exceeds 12 months.

*[S 709/2010 wef 26/11/2010]*

**Temporary representative**

**3C.**—(1) For the purpose of section 99M(1)(s)(iii) of the Act, the Authority may refuse to enter the name and other particulars of an individual in the public register of representatives as a temporary representative in respect of a type of regulated activity,

if the period of his proposed appointment, together with the period of any past appointment (or part thereof) that falls within the period of 24 months before the date of expiry of his proposed appointment, exceeds 6 months.

(2) The period which the Authority may specify in the public register of representatives under section 99F(2) of the Act as the period which any named individual can be a temporary representative in respect of any type of regulated activity shall not exceed 3 months from the date his name is entered in the register as a temporary representative.

*[S 709/2010 wef 26/11/2010]*

**3D.** *[Deleted by S 503/2012 wef 19/11/2012]*

### Register of interests in **specified productssecurities**

4.—(1) Each of the following persons (referred to in this regulation and regulation 4A as a relevant person), namely:

- (a) a holder of a capital markets services licence to deal in **capital markets products that are specified productssecurities**;
- (b) a holder of a capital markets services licence to advise on corporate finance;
- (c) a holder of a capital markets services licence for fund management;
- (d) a holder of a capital markets services licence for real estate investment trust management;
- (e) a holder of a capital markets services licence for providing credit rating services;
- (f) a representative of a holder of a capital markets services licence referred to in sub-paragraph (a), (b), (c), (d) or (e),

shall —

- (i) maintain in Form 15 a register of his interests in **specified productssecurities**;
- (ii) enter into the register, within 7 days after the date that he acquires any interest in **specified productssecurities**, particulars of the **specified products securities** in which he has an interest and particulars of his interests in those **specified productssecurities**;
- (iii) retain that entry in an easily accessible form for a period of not less than 5 years after the date on which such entry was first made; and
- (iv) ensure that a copy of the register is kept in Singapore.

(2) Where there is a change in any interest in **specified productssecurities** of a relevant person, the relevant person shall —

(a) enter in the register, within 7 days after the date of the change, particulars of the change including the date of the change and the circumstances by reason of which the change has occurred; and

(b) retain that entry in an easily accessible form for a period of not less than 5 years after the date on which such entry was first made.

(3) A relevant person shall, upon the Authority's request —

(a) produce for the Authority's inspection the register of his interests in **specified productssecurities**; and

(b) allow the Authority to make a copy of, or take extracts from, the register.

(4) The Authority may provide a copy of an extract of a register obtained under paragraph (3) to any person who, in the opinion of the Authority, should in the public interest be informed of the dealing in **specified productssecurities**—disclosed in the register.

(5) In this regulation and regulation 4A, “**specified productssecurities**” means **specified productssecurities**—which are listed for quotation, or quoted on **an approved exchangea securities exchange**—or a recognised market operator.

*[S 503/2012 wef 19/11/2012]*

### **Place at which register is kept**

**4A.**—(1) A relevant person shall keep the register of his interests in **specified productssecurities**—referred to in regulation 4 —

(a) in the case of an individual, at his principal place of business; or

(b) in the case of a corporation, at any of its places of business.;

(2) The register of interests in **specified productssecurities**—may be kept in electronic form if the relevant person ensures that full access to such register may be gained by the Authority at the place referred to in paragraph (1)(a) or (b), as the case may be.

(3) An applicant for a capital markets services licence to carry on business in dealing in **capital markets products that are specified productssecurities**, advising on corporate finance, fund management, real estate investment trust management or providing credit rating services shall, when applying for the licence, give notice to the Authority in Form 1 or Form 1A, or both, whichever is applicable, of —

(a) the place at which it intends to keep the register of his interests in **specified productssecurities**—or, if the register is in electronic form, the place at which full access to the register may be gained; and

(b) such other particulars as are set out in the Form.

[S 170/2013 wef 28/03/2013]

(4) A holder of a capital markets services licence shall, when applying under section 90 of the Act to have its licence varied by adding any regulated activity in respect of dealing in **capital markets products that are specified productssecurities**, advising on corporate finance, fund management, real estate investment trust management or providing credit rating services, give notice to the Authority in Form 10 of —

(a) the place at which it intends to keep the register of its interests in **specified productssecurities**—or, if the register is in electronic form, the place at which full access to the register may be gained; and

(b) such other particulars as are set out in the Form.

(5) The person who gives the notice under paragraph (3) or (4) shall, within 14 days from the date of every subsequent change of the place for keeping the register referred to in paragraph (3)(a) or (4)(a), as the case may be, lodge with the Authority a notice of the change of place in Form 10.

(6) A relevant person who is a holder of a capital markets services licence shall maintain records of the place at which its representatives keep their registers of their interests in **specified productssecurities**—and the places at which copies of those registers are kept in Singapore under regulation 4(1)(iv).

(7) A relevant person who is a holder of a capital markets services licence shall, upon the Authority's request —

(a) produce for the Authority's inspection such records referred to in paragraph (6); and

(b) allow the Authority to make a copy of, or take extracts from, such records.

[S 503/2012 wef 19/11/2012]

### **Change of particulars and additional regulated activity of representative**

5.—(1) An appointed representative shall notify his principal of any change in any of his particulars, being particulars set out in Form 3A, within 7 days after the occurrence of such change.

(2) A provisional representative shall notify his principal of any change in any of his particulars, being particulars set out in Form 3B, within 7 days after the occurrence of such change.

(3) A temporary representative shall notify his principal of any change in any of his particulars, being particulars set out in Form 3C, within 7 days after the occurrence of such change.

(4) An individual who is deemed to be an appointed representative under regulation 5(1)(a) or (c) or (3) of the Securities and Futures (Representatives)

(Transitional and Savings Provisions) Regulations 2010 (G.N. No. S 712/2010) shall notify his principal of any change in any of his particulars, being particulars set out in Form 3A, within 7 days after the occurrence of such change.

(5) Where an individual has applied for the renewal of a representative's licence under section 87 of the Act in force immediately before 26th November 2010 and the application is still pending on that date, he shall notify his principal of any change in any of his particulars, being particulars set out in Form 3A, within 7 days after the occurrence of such change.

(6) An individual who is deemed to be a temporary representative under regulation 5(2) or (3) of the Securities and Futures (Representatives) (Transitional and Savings Provisions) Regulations 2010 (G.N. No. S 712/2010) shall notify his principal of any change in any of his particulars, being particulars set out in Form 3C, within 7 days after the occurrence of such change.

(7) The principal of an individual referred to in paragraph (4), (5) or (6) shall, no later than 7 days after the principal is notified or becomes aware of any change in the individual's particulars which has been or ought to have been notified under that paragraph, furnish particulars of such change to the Authority in Form 16.

(8) For the purposes of section 99H(5) of the Act, the principal of an appointed, a provisional or a temporary representative shall notify the Authority of a change in the particulars of the representative in Form 16.

(9) A notice under section 99L(2) of the Act by a principal of its intention to appoint an appointed representative in respect of a type of regulated activity in addition to that indicated against the appointed representative's name in the public register of representatives shall be in Form 6.

*[S 709/2010 wef 26/11/2010]*

## **Fees**

**6.—**(1) Subject to this regulation, the fees specified in the Third Schedule are payable to the Authority for the purposes, in the manner and at the times specified therein.

(2) Where —

- (a) the name of a person is entered in the public register of representatives as a provisional representative;
- (b) he pays the annual fee referred to in section 99K(2) of the Act for the retention of his name in the public register of representatives as a provisional representative for a period of time; and

- (c) his name is subsequently entered in the register as an appointed representative at any time during that period or on the business day immediately following the expiry of that period,

then the person is deemed to have paid the annual fee for the continuing retention of his name in the register as an appointed representative, in respect of the regulated activity conducted by the person while he was a provisional representative.

(3) For the purposes of sections 85(4) and 99K(6) of the Act, the late payment fee is \$100 for every day or part thereof that the payment is late subject to a maximum of \$3,000.

(4) Payment of fees may be made through such electronic funds transfer system as the Authority may designate from time to time, whereby payment is effected by directing the transfer of funds electronically from the bank account of the payer to a bank account designated by the Authority.

(4A) For the purposes of section 99A(4) of the Act, where the annual fee referred to in paragraph 5(7) of the Second Schedule or item 9 of the Third Schedule is not paid, a late payment fee of \$100 for every day or part thereof that the payment is late, subject to a maximum of \$3,000, shall also be payable.

*[S 385/2012 wef 01/04/2013]*

(5) The Authority may, as it thinks fit, waive the whole or any part of the fee payable under section 84, 85, 90, 99A or 99K of the Act.

(6) Where the holder of a capital markets services licence is licensed to carry on business in more than one regulated activity, the amount of the licence fee payable to the Authority shall be the sum of the fees specified in the Third Schedule for the regulated activities that the holder is licensed to carry out.

*[S 709/2010 wef 26/11/2010]*

### **Manner of application for capital markets services licence**

**6A.**—(1) An application for the grant of a capital markets services licence for any regulated activity other than fund management shall be in Form 1 and shall be lodged with the Authority together with any relevant annex and information as may be specified in the Form or by the Authority from time to time.

*[S 385/2012 wef 07/08/2012]*

(2) An application for the grant of a capital markets services licence for the regulated activity of fund management shall be in Form 1A and shall be lodged with the Authority together with any relevant annex and information as may be specified in the Form or by the Authority from time to time.

*[S 385/2012 wef 07/08/2012]*

**Deposit to be lodged in respect of capital markets services licence to deal in capital markets products that are specified products~~securities~~**

7.—(1) Subject to paragraph (2), an application for a capital markets services licence to carry on business in dealing in **capital markets products that are specified products~~securities~~** must be accompanied by a deposit of \$100,000 to be lodged in the manner determined by the Authority.

(2) The deposit mentioned in paragraph (1) is not required in the case of an applicant —

- (a) that is a member of **an approved exchange or recognised market operator~~a securities exchange~~**; or
- (b) that is a person which —
  - (i) does not carry any customer's positions in **specified products~~securities~~**, margins or accounts in that person's own books;
  - (ii) deals in **specified products~~securities~~** only with accredited investors, **expert investors** or institutional investors;
  - (iii) does not accept money or assets from any customer as settlement of, or as a margin for, or to guarantee or secure, any contract for the purchase or sale of **specified products~~securities~~** by that customer; and
  - (iv) does not enter into any transaction with any customer to deal in **specified products~~securities~~** as principal.

(2A) The deposit mentioned in paragraph (1) must be maintained for the entire duration of the licence.

(2B) The deposit mentioned in paragraph (1) must be lodged with the Authority —

- (a) by making payment through any electronic funds transfer system as the Authority may designate from time to time;
- (b) in the form of a banker's guarantee issued by a bank licensed under the Banking Act (Cap. 19); or
- (c) in cash.

(3) The deposit lodged by the holder of a capital markets services licence under paragraph (1) shall be applied by the Authority for the purpose of compensating any person (other than an accredited investor, **expert investor or institutional investor**) who suffers pecuniary loss as a result of any defalcation committed by the holder or by any of its agents in relation to any money or other property which, in the course of or in connection with its business **of** dealing in **capital markets products that are specified products~~securities~~**, was —

- (a) entrusted to or received by the holder or agent for or on behalf of any other person; or



(b) entrusted to or received by —

- (i) the holder, as trustee (whether or not with any other person) of that money or property; or
- (ii) the agent as trustee of, or on behalf of the trustee of, that money or property.

(4) Subject to these Regulations, every person who suffers pecuniary loss as provided in paragraph (3) shall be entitled to claim compensation in relation to the relevant deposit lodged with the Authority.

(5) The amount which any claimant shall be entitled to claim as compensation shall be the amount of actual pecuniary loss suffered by him (including the reasonable cost of and disbursements incidental to the making and proof of his claim) less the amount or value of all moneys or other benefits received or receivable by him from any source, other than the Authority, in reduction of the loss.

(6) The Authority may cause to be published in a daily newspaper published and circulating generally in Singapore a notice in Form 17 specifying a date, not being earlier than 3 months after the date of publication, on or before which claims for compensation in relation to the deposit lodged by the person specified in the notice may be made.

(7) A claim for compensation in respect of a defalcation shall be made in writing to the Authority —

- (a) where a notice under paragraph (6) has been published, on or before the date specified in the notice; or
- (b) where no such notice has been published, within 6 months after the claimant becomes aware of the defalcation,

and any claim which is not so made shall be barred unless the Authority otherwise determines.

(8) The Authority may, subject to these Regulations and after such enquiry as it thinks fit —

- (a) allow and settle any proper claim made in accordance with paragraph (7) and determine the amount payable as compensation; or
- (b) disallow any improper claim.

(9) For the purposes of paragraph (3), where the Authority is satisfied that the defalcation on which a claim is founded was actually committed, it may allow the claim and act accordingly notwithstanding that the person who committed the defalcation has not been convicted or prosecuted therefor or that the evidence on which the Authority acts would not be sufficient to establish the guilt of that person upon a criminal trial in respect of the defalcation.

(10) Nothing in these Regulations shall require the Authority to settle a claim in full or in part where the relevant deposit lodged with the Authority is insufficient to meet the aggregate amount of the claims for compensation.

### Return of deposit

8.—(1) Where —

- (a) the holder of a capital markets services licence to deal in **capital markets products that are specified productssecurities**, which has lodged with the Authority a deposit under regulation 7, ceases to carry on business in dealing in **capital markets products that are specified productssecurities**;
- (b) a capital markets services licence to deal in **capital markets products that are specified productssecurities** has lapsed or has been revoked by the Authority; or
- (c) the holder of a capital markets services licence to deal in **capital markets products that are specified productssecurities** is admitted as a member of an **approved exchange or recognised market operator** ~~a securities exchange~~ after it has been granted the licence,

the Authority may release to the holder the deposit or, where any part thereof has previously been paid to a judgment creditor or liquidator or where any claim in respect thereof has previously been allowed, the balance (if any) of the deposit so lodged —

- (i) in the case of sub-paragraph (a), on the expiration of 3 months after service on the Authority of a notice in writing duly signed by or on behalf of the holder stating that it has ceased to carry on such business in Singapore and on the Authority being satisfied that the holder has not, from the date of cessation of business indicated on the notice, carried on such business in Singapore; and
- (ii) in every case, on the Authority being satisfied that all the liabilities in Singapore of the holder in respect of its dealing in **capital markets products that are specified productssecurities** are fully liquidated or provided for.

(2) The Authority may cause every notice served on it under paragraph (1)(i) and its decision with regard to the proposed release of the deposit or the balance thereof to be published at the cost of the holder in such manner as the Authority thinks fit.

### Lapsing of capital markets services licence

9. For the purposes of section 95(1)(b) of the Act, where the Authority has not revoked a capital markets services licence under section 95(2) of the Act, or suspended the capital markets services licence under section 95(3) of the Act, the licence shall lapse —

- (a) if the holder has not commenced business in at least one of the regulated activities to which the licence relates within 6 months (or such longer period as the Authority may allow) from the date of the grant of the licence, immediately upon the expiry of that period; or

(b) if the holder —

- (i) has ceased to carry on business in all of the regulated activities to which the licence relates;
- (ii) has not resumed business in any of those regulated activities for a continuous period of 2 months from the date of cessation of business; and
- (iii) has not notified the Authority of such cessation of business at any time during the period of 2 months,

immediately upon the expiry of that period of 2 months.

*[S 709/2010 wef 26/11/2010]*

### **Cessation of status of appointed representative**

**9A.** For the purpose of section 99D(4)(e) of the Act, unless the Authority has revoked the status of an individual as an appointed representative under section 99M(1) of the Act, or suspended that status under section 99M(2)(a) of the Act, the individual shall cease to be an appointed representative in respect of all types of regulated activity if —

(a) before the end of the period of 6 months (or such longer period as the Authority may allow in any particular case) from —

- (i) the date his name was entered in the public register of representatives as an appointed representative ; or
- (ii) if he was an appointed representative by virtue of the Securities and Futures (Representatives) (Transitional and Savings Provisions) Regulations 2010 (G.N. No. S 712/2010), the date when he was granted a representative's licence under section 87 of the Act in force immediately before 26th November 2010

the appointed representative has not commenced to act as a representative in at least one of the regulated activities that he was appointed to carry out as a representative; or

(b) the appointed representative —

- (i) has ceased to act as a representative in respect of all of the regulated activities he was appointed to carry out as a representative; and
- (ii) has not resumed acting as such a representative in respect of any of those regulated activities for a continuous period of one month from the date of cessation,

and his principal has not notified the Authority of such cessation at any time during that period of one month.

[S 709/2010 wef 26/11/2010]

**10.** [Deleted by S 709/2010 wef 26/11/2010]

**Cessation of business by holder**

**11.**—(1) Where any of the following circumstances relating to the holder's cessation of business occurs, the holder shall, within 14 days from the date of cessation, return its capital markets services licence to the Authority and lodge with the Authority a notice in Form 7:

- (a) the holder ceases to carry on business in every type of the regulated activities to which its licence relates,
- (b) the holder ceases to carry on business in any type of regulated activity to which its licence relates but has not ceased to carry on business in the remaining types of regulated activities;
- (c) where the holder is licensed to carry on business in the regulated activity **of** dealing in capital markets products, the holder ceases to deal in capital markets products in respect of any type of capital markets products to which its licence relates but has not ceased to deal in capital markets products in respect of the remaining types of capital markets products to which its licence relates.

(2) Where any of the following circumstances relating to the holder's commencement or non-commencement of business occurs, the holder shall immediately return its capital markets services licence to the Authority and lodge with the Authority a notice in Form 7:

- (a) the holder has not commenced business in every type of regulated activity to which the licence relates by the end of the period of 6 months (or such longer period as the Authority may allow in any particular case) from the date of the grant of the licence;
- (b) the holder has commenced business in any type of regulated activity but not all the types of regulated activity to which the licence relates by the end of the period of 6 months (or such longer period as the Authority may allow in any particular case) from the date of the grant of the licence;
- (c) where the holder is licensed to carry on business in the regulated activity **of** dealing in capital markets products, the holder has commenced to deal in capital markets products in respect of any type of capital markets products but not all types of capital markets products to which its licence relates, by the end of the period of 6 months (or such longer period as the Authority may allow in any particular case) from the date of the grant of the licence.

(3) Upon receipt of the notice and licence referred to in paragraph (1) or (2), the Authority may cancel the licence and, in the case referred to in –

(a) paragraph (1)(b) or (2)(b), issue to the holder a new capital markets services licence in respect of the type or types of regulated activities in which the holder carries on business; or

(b) paragraph (1)(c) or (2)(c), issue to the holder a new capital markets services licence in respect of the regulated activity of dealing in capital markets products that are the types of capital markets products in which the holder carries on business.

~~(1) Where the holder of a capital markets services licence ceases to carry on business in every type of the regulated activities to which its licence relates, it shall, within 14 days from the date of cessation, return its licence to the Authority and lodge with the Authority a notice in Form 7.~~

~~(2) Where the holder of a capital markets services licence ceases to carry on business in any type of regulated activity to which its licence relates but has not ceased to carry on business in the remaining types of regulated activities, it shall, within 14 days from the date of cessation, return its licence to the Authority and lodge with the Authority a notice in Form 7.~~

~~(3) Where the holder of a capital markets services licence has, by the end of the period of 6 months (or such longer period as the Authority may allow in any particular case) from the date of the grant of the licence, commenced business in one or more but not all the types of regulated activity to which the licence relates, it shall immediately return its licence to the Authority and lodge with the Authority a notice in Form 7.~~

~~(4) Where the holder of a capital markets services licence has not commenced business in every type of regulated activity to which the licence relates by the end of the period of 6 months (or such longer period as the Authority may allow in any particular case) from the date of the grant of the licence, it shall immediately return its licence to the Authority and lodge with the Authority a notice in Form 7.~~

~~(5) Upon receipt of the notice and licence referred to in paragraph (1), (2), (3) or (4), the Authority shall cancel the licence and, in the case referred to in paragraphs (2) and (3), issue to the holder a new licence in respect of the remaining type or types of regulated activities~~

*[S 709/2010 wef 26/11/2010]*

### **Variation of capital markets services licence**

**11A.**—(1) An application for the variation of a capital markets services licence under section 90 of the Act shall be in Form 5 and shall be lodged with the Authority together with any relevant annex and information as may be specified in the Form or by the Authority from time to time.

(2) Where the Authority adds to, varies or revokes any condition or restriction of a capital markets services licence or imposes further conditions or restrictions on such a licence, the Authority may require the holder to return its licence to the Authority for

cancellation and issuance of a new licence, and the holder shall comply with such a requirement.

(3) Where the Authority has approved an application of the holder of a capital markets services licence under section 90(1) of the Act to add to its licence one or more types of regulated activity, the holder shall immediately return its licence to the Authority for cancellation and issuance of a new licence.

*[S 709/2010 wef 26/11/2010]*

### **Lodgment of particulars of cessation**

**11B.**—(1) For the purposes of sections 99D(8), 99E(4) read with 99D(8) of the Act and section 99F(4) read with 99D(8) of the Act, particulars that an individual has ceased to be a representative of a principal, or has ceased to carry on business in any type of regulated activity which he is appointed to carry on business in, shall be furnished to the Authority in Form 8.

(2) Where an appointed representative has ceased to be a representative under regulation 9A(a), his principal shall immediately lodge with the Authority a notice of such cessation in Form 8.

*[S 709/2010 wef 26/11/2010]*

### **Application for appointment of chief executive officer and director**

**12.**—(1) For the purposes of section 96(1) of the Act, the holder of a capital markets services licence shall submit to the Authority an application for approval of the appointment of a person (referred to in this regulation as the appointee) as its chief executive officer or director, or to change the nature of the appointment of a person as a director from one that is non-executive to one that is executive, in Form 11.

(2) For the purposes of section 96(2) of the Act, the criteria to which the Authority may have regard in determining whether to grant its approval in respect of an application made under paragraph (1) are —

(a) whether the holder has provided the Authority with such information relating to the appointee or director as the Authority may require;

(aa) whether the appointee or director has had a prohibition order under section 101A of the Act made by the Authority against him that still remains in force;

*[S 709/2010 wef 26/11/2010]*

(b) whether the appointee or director is an undischarged bankrupt in Singapore or elsewhere;

(c) whether execution against the appointee or director in respect of a judgment debt has been returned unsatisfied in whole or in part;

- (d) whether the appointee or director has, in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) whether the appointee or director —
  - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
  - (ii) has been convicted of an offence under the Act;
- (f) the educational or other qualification, experience or expertise of the appointee or director, having regard to the nature of the duties he is to perform as a chief executive officer, director or executive director, as the case may be, of the holder;
- (g) whether the appointee or director is a fit and proper person to be a chief executive officer, director or executive director, as the case may be, of the holder;
- (h) the financial standing of the appointee or director;
- (i) the past performance of the appointee or director, having regard to the nature of the duties he is to perform as a chief executive officer, director or executive director, as the case may be, of the holder; and
- (j) whether there is reason to believe that the appointee or director will not conduct himself professionally or act in an ethical manner in discharging the duties he is to perform as a chief executive officer, director or executive director, as the case may be, of the holder.

### **Duties of holder of capital markets services licence**

**13.** The holder of a capital markets services licence shall —

- (a) comply with all laws and rules governing the holder's operations; and
- (b) in a manner that is commensurate with the nature, scale and complexity of the business of the holder —
  - (i) implement, and ensure compliance with, effective written policies on all operational areas of the holder, including the holder's financial policies, accounting and internal controls, and internal auditing;
  - (ii) put in place compliance function and arrangements including specifying the roles and responsibilities of officers and employees of the holder in helping to ensure its compliance with all applicable laws, codes of conduct and standards of good practice in order to protect investors and reduce the holder's risk of incurring legal or regulatory sanctions that may be imposed by the Authority or any other public authority, financial loss, and reputational damage;

- (iii) identify, address and monitor the risks associated with the trading or business activities of the holder;
- (iv) ensure that the business activities of the holder are subject to adequate internal audit;
- (v) ensure that the internal audit of the holder or the holder's holding company (if any) includes inquiring into the holder's compliance with all relevant laws and all relevant business rules of any **approved exchange or recognised market operator**~~securities exchange, futures exchange~~ and **approved clearing house or recognised clearing house**~~clearing house~~;
- (vi) set out in writing the limits of the discretionary powers of each officer, committee, sub-committee or other group of persons of the holder empowered to commit the holder to any financial undertaking or to expose the holder to any business risk (including any financial, operational or reputational risk);
- (vii) keep a written record of the steps taken by the holder to monitor compliance with its policies, its accounting and operating procedures, and the limits on discretionary powers;
- (viii) ensure the accuracy, correctness and completeness of any report, book or statement submitted by the holder to its head office (if any) or to the Authority; and
- (ix) ensure effective controls and segregation of duties to mitigate potential conflicts of interest that may arise from the operations of the holder.

*[S 170/2013 wef 28/03/2013]*

### **Criteria for determining if chief executive officer or director of holder of capital markets services licence has breached duties**

**13A.** For the purposes of section 97(2) of the Act and without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether a chief executive officer or a director of the holder of a capital markets services licence has failed to discharge the duties or functions of his office, have regard to whether the chief executive officer or director has ensured compliance by the holder with each of the duties specified in regulation 13.

*[S 170/2013 wef 28/03/2013]*

### **Duties of holder of capital markets services licence for regulated activity of fund management**

**13B.—**(1) Without prejudice to regulation 13, the holder of a capital markets services licence for fund management shall —



- (a) put in place a risk management framework (that identifies, addresses and monitors the risks associated with assets under its management) which is appropriate to the nature, scale and complexity of the assets;
- (b) subject assets under its management to independent valuation for the purpose of determining their respective net asset values, and ensure that a party independent of the holder conveys such values to the customers to which the assets relate or, if the assets are in the form of units in a closed-end fund or collective investment scheme, to the unitholders of the fund or scheme;
- (c) segregate assets under its management, other than assets which are already subject to regulation 17 or 27 (as the case may be), from the proprietary assets of the holder or the holder's related corporations or connected persons, and maintain them in —
  - (i) a trust account with any financial institution referred to in regulation 17(1)(a), (b) or (c), or with a custodian outside Singapore which is licensed, registered or authorised to conduct banking business in the country or territory where the account is maintained; or
  - (ii) a custody account with any financial institution or other person referred to in regulation 27(1)(a) to (f), or with a custodian outside Singapore which is licensed, registered or authorised to act as a custodian in the country or territory where the account is maintained;
- (d) accord priority to transactions for the purchase or sale of **capital markets products** ~~securities or futures contracts~~, or to investments, made on behalf of its customers, over those made for any of the following persons:
  - (i) the holder;
  - (ii) the holder's associated persons;
  - (iii) the holder's officers;
  - (iv) the holder's employees;
  - (v) the holder's representatives;
  - (vi) any person whom the holder knows to be an associated person of any person referred to in sub-paragraph (iii), (iv) or (v); and
- (e) mitigate conflicts of interest arising from the management of assets and, where appropriate, disclose such conflicts of interest to the customer concerned.

(2) A transaction made for any person referred to in sub-paragraphs (i) to (vi) of paragraph (1)(d) excludes any transaction for the purchase or sale of **capital markets products** ~~or investments securities or futures contracts~~ which are, or are to be, beneficially owned by a person who is not referred to in sub-paragraphs (i) to (vi) of paragraph (1)(d).

(3) In paragraph (1)(d), a person is an associated person of another person if the first-mentioned person is —

- (a) a related corporation of the second-mentioned person;
- (b) a connected person of the second-mentioned person;
- (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to a transaction or investment referred to in paragraph (1)(d); or
- (d) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to a transaction or investment referred to in paragraph (1)(d).

(4) Paragraph (1)(c) does not apply to the following assets under the management of the holder:

(a) ~~capital markets products securities~~ which are not listed for quotation or quoted on ~~an organised market a securities market~~; or

(b) interests in a closed-end fund, where —

- (i) the closed-end fund is to be used for private equity or venture capital investments; and
- (ii) interests in the closed-end fund are offered only to accredited investors, expert investors and/or institutional investors ~~or both~~,

and in either case of sub-paragraph (a) or (b), the holder has —

- (A) disclosed the fact that the assets are not maintained in a trust account or custody account in accordance with paragraph (1)(c) to the customer and obtained the customer's acknowledgement of the custody arrangement; and
- (B) arranged for an auditor to audit the assets on an annual basis and furnish a report on the audit to the customer.

(5) For the purposes of this regulation, assets are under the management of the holder of a capital market services licence for fund management if they are the subject of fund management carried out directly by the holder, or indirectly by the holder through another entity.

*[S 170/2013 wef 28/03/2013]*

### **Criteria for determining if chief executive officer or director of holder of capital markets services licence for fund management has breached duties**

**13C.** For the purposes of section 97(2) of the Act and without prejudice to regulation 13A and any other matter that the Authority may consider relevant, the Authority shall, in determining whether a chief executive officer or a director of the holder of a capital

markets services licence for fund management has failed to discharge the duties or functions of his office, have regard to whether the chief executive officer or director has ensured compliance by the holder with each of the duties specified in regulation 13B.

[S 170/2013 wef 28/03/2013]

## Risk mitigation

**13D.**—(1) ~~The holder of a capital markets services licence for A person exempted under section 99(1)(a), (b) or (c) of the Act shall, for the purpose of dealing in capital markets products that are uncleared derivatives contracts with counterparties who are accredited investors, expert investors or institutional investors, shall, in a manner that is commensurate with the nature, scale and complexity of the business of the holder in uncleared derivatives contracts, implement, and ensure compliance with, effective written policies and operating procedures in relation to –~~

- (a) ~~ensuring the execution of written trading relationship documentations are executed by the person with its counterparties, prior to or contemporaneously with the entry into such every uncleared derivatives contract entered into between the person and its counterparties;~~
- (b) providing confirmations of the material terms of every uncleared derivatives contract as soon as practicable after the date of execution of the contract;
- (c) carrying out reconciliation, at regular intervals, of the material terms and valuations concerning the ~~holder person's~~ portfolio of uncleared derivatives contracts ~~entered with its counterparties;~~
- (d) assessing at regular intervals and, to the extent appropriate, engaging in portfolio compression in relation to the ~~holder person's~~ portfolio of uncleared derivatives contracts; and
- (e) resolving, as soon as practicable, disputes arising from discrepancies in any material terms, or the valuation, of any uncleared derivatives contract.

(2) Without prejudice to paragraph (1)(a), the person may, for the purpose of entering into a single, one-off transaction in an uncleared derivatives contract with its counterparties, execute a trade confirmation that includes all material rights and obligations of the ~~counter~~parties to the contract.

(3) In this regulation, “portfolio compression” means ~~any exercise, the purpose or intended purpose of which is to reduce the risks (including but not limited to credit risk, market risk or operational risk) in connection with the holder's portfolio of uncleared derivatives contracts, and includes but is not limited to~~ a risk reduction exercise in which two or more ~~counter~~parties wholly or partially terminate some or all of the ~~uncleared~~ derivatives contracts submitted by those ~~counter~~parties involved in the exercise and replace the terminated ~~uncleared~~ derivatives contracts with ~~an~~ other ~~uncleared~~ derivatives contracts whose combined notional value is less than the combined notional value of the terminated ~~uncleared~~ derivatives contracts.

**(4) In this regulation, “counterparties” does not include the related corporations or connected persons of the holder.**

*[In keeping with MAS’s philosophy of a level playing field, the risk mitigation requirements for uncleared derivatives contracts should apply not only to exempt banks, merchant banks and finance companies, but also to holders. As the primary purpose behind the risk mitigation requirements for uncleared derivatives is not customer protection, it should apply regardless of the type of customer. However, the policies and procedures to be implemented by the holder or exempt financial institution should be risk-based and take into account the specifics of its business. We believe regulation 13 neatly conveys this principle and have thus replicated the language from regulation 13.]*

## **Exemptions**

**14.—**(1) Each person specified in the Second Schedule is exempted from section 82(1) or section 99B(1) (as the case may be) of the Act, in the circumstances specified in that Schedule.

(2) Where a person acts as a representative of any person specified in paragraphs 1 to 7 of the Third Schedule to the Act (referred to in this paragraph as the principal), he shall be exempted from section 99B(1) of the Act, in so far as —

- (a) the type and scope of the regulated activity carried out by the person acting as a representative are within or the same as the type and scope of the regulated activity carried out by the principal in his capacity as specified in the relevant paragraph of the Third Schedule to the Act; and
- (b) the manner in which the person acting as a representative carries out the regulated activity is the same as the manner in which the principal carries out the regulated activity in his capacity as specified in the relevant paragraph of the Third Schedule to the Act.

(3) Where a person acts as a representative of a foreign company specified in paragraph 9 of the Third Schedule to the Act, the person acting as a representative shall be exempted from section 99B(1) of the Act, in so far as he complies with every condition or restriction imposed on the foreign company pursuant to an approval granted for the arrangement between the foreign company and its related corporation under that paragraph, where such condition or restriction is applicable to him.

(4) A person who is exempted from holding a capital markets services licence under section 99(1)(a), (b), (c) or (d) of the Act shall lodge with the Authority —

- (a) where the person commences business in any regulated activity or any additional regulated activity, **or where the person commences business in the regulated activity of dealing in capital markets products for any additional types of capital markets product**, a notice of such commencement in Form 26 not later than 14 days prior to the commencement or such later date as the Authority may allow in any particular case;
- (b) where the person ceases business in any or all of the regulated activities for which notice has been given in —
  - (i) Form 26 under sub-paragraph (a);

- (ii) Form 26 under regulation 14(4)(a) in force immediately before 26th November 2010; or
- (iii) Form ~~2627~~ under regulation 14(4)(b) in force immediately before 26th November 2010,

a notice of cessation in Form 29, not later than 14 days after the cessation or such later date as the Authority may allow;

(c) where there is any change in any particulars required to be notified in —

- (i) Form 26 under sub-paragraph (a);
- (ii) Form 26 under regulation 14(4)(a) in force immediately before 26th November 2010; or
- (iii) Form ~~2627~~ under regulation 14(4)(b) in force immediately before 26th November 2010,

a notice of such change in Form 27, not later than 14 days after the date of change or such later date as the Authority may allow in any particular case; and

(d) a declaration by the person in Form 28 within 14 days or such longer period as the Authority may allow after the end of the financial year of the person.

*[S 709/2010 wef 26/11/2010]*

## **Holders of capital markets services licences and representatives, etc., to be fit and proper persons**

**14A.**—(1) The holder of a capital markets services licence shall ensure that —

- (a) it is a fit and proper person to carry on business in the regulated activity for which it is licensed;
- (b) its representatives are fit and proper persons to carry out that regulated activity as its representatives;
- (c) its chief executive officer, directors or equivalent persons are fit and proper persons for office; and
- (d) its substantial shareholders or equivalent persons are fit and proper persons in their capacity as such.

(2) For the purposes of section 99(4) of the Act —

(a) a person who is exempted from holding a capital markets services licence under section 99(1)(a), (b), (c), (d), (f) or (g) of the Act shall ensure that —

- (i) he is a fit and proper person to carry on business in the regulated activity for which he is exempted; and
- (ii) his representatives are fit and proper persons to carry out that regulated activity as his representatives; and

(b) a Registered Fund Management Company or a person who is exempted from holding a capital markets services licence under paragraph 7(1)(b) of the Second Schedule shall ensure that —

- (i) he is a fit and proper person to carry on business in the regulated activity for which he is exempted;
- (ii) his representatives are fit and proper persons to carry out that regulated activity as his representatives; and
- (iii) where the person is an entity —
  - (A) its directors or equivalent persons are fit and proper persons for office;
  - (B) its substantial shareholders or equivalent persons are fit and proper persons to be in such capacity; and
  - (C) persons (other than a person referred to in sub-paragraph (A) or (B)) alone or acting together with any connected person, who —
    - (CA) control, directly or indirectly, not less than 20% of the voting power or such equivalent decision-making power in the entity; or
    - (CB) acquire or hold, directly or indirectly, not less than 20% of the issued shares or such equivalent share of ownership of the entity,

*[S 385/2012 wef 07/08/2012]*

are fit and proper persons to control such power or hold such shares or share of ownership.

*[S 709/2010 wef 26/11/2010]*

### PART III

#### CUSTOMER'S MONEYS AND ASSETS

##### *Division 1 — Definitions*

#### **Definitions of this Part**

**15.** —(1) In Part V of the Act and this Part, “customer”, in relation to the holder of a capital markets services licence, does not include —

- (a) the holder in carrying out any regulated activity for its own account;
- (b) an officer, an employee or a representative of the holder; or
- (c) a related corporation or connected person of the holder with respect to an account belonging to and maintained wholly for the benefit of that related corporation or connected person.

For the avoidance of doubt, “customer”, in relation to the holder of a capital markets services licence, does not include a person that purchases from such holder securities or securities-based derivatives contracts issued by such holder where such purchase is made pursuant to an offer of such securities or securities-based derivatives contracts that is subject to Part XIII of the Act.

(2) For the purposes of this Part, a reference to money received on account of a customer of the holder of a capital markets services licence includes —

- (a) money received from, or on account of, the customer in respect of a sale or purchase of ~~any capital markets products~~~~future contract or a transaction connected with leveraged foreign exchange trading~~;
- (b) money received from, or on account of, the customer for the ~~purchase of or~~ **[Covered by (a).]** holding of ~~any capital markets products~~~~securities~~, or the maintenance of a ~~securities~~-trading account for ~~any capital markets products~~ by the customer;
- ~~(c) money received for the account of the customer in respect of a sale of securities; [Covered by (a).]~~
- (d) money received from, or on account of, the customer, where the holder provides ~~product~~~~securities~~ financing to such customer;
- (e) money received from, or on account of, the customer for the purpose of managing the customer's funds; and
- (f) money received from, or on account of, the customer in the course of the business of the holder,

but does not include —

- (i) money which is to be used to reduce the amount owed by the customer to the holder;
- (ii) money which is to be paid to the customer or in accordance with the customer's written direction;
- (iii) money which is to be used to defray the holder's brokerage and other proper charges; ~~and~~
- (iv) money which is to be paid to any other person entitled to the money-- ;
- (v) ~~money referred to in paragraph 3(b) or 3(c); or~~
- (vi) ~~subject to paragraph (4), money received from, or on account of, the customer who is an accredited investor, expert investor or institutional investor in connection with any specified unlisted derivatives contract executed by that customer.~~

*[Please elaborate on the rationale behind this. Given the definitions of "specified uncleared (not unlisted) derivatives contract" and "contracts for differences", this provision in its present form appears to us to have no practical force as no money will ever fall within this limb. A "specified uncleared derivatives contract" is defined to exclude a contract for differences. All OTC derivatives contracts would fall within the definition of "contracts for differences" and thus, there could never be any "specified uncleared derivatives contract". We should add that we do not understand the rationale even with our narrower proposed definition of "contracts for differences" - limiting them to contracts for differences on securities and currencies and their indices - as MAS has made clear in its 2014 Unlisted Margin Derivatives Response that its measures on unlisted margin derivatives do not apply to accredited investors, expert investors and*

*institutional investors. We submit that money and assets held for accredited investors, expert investors and institutional investors should not be subject to Part III.]*

(3) In this Part —;

(a) “customer’s assets”, in relation to the holder of a capital markets services licence, means securities and assets (other than money), including Government securities and certificates of deposits, that are beneficially owned by a customer of the holder, but does not include:

(i) ~~subject to paragraph (4), assets received from, or on account of, the customer who is an accredited investor, expert investor or institutional investor in connection with any specified uncleared derivatives contract executed by that customer [See above comment.];~~  
or

(ii) assets referred to in paragraph 3(b) ~~or 3(c); and~~

(b) where a customer transfers ~~or purports to transfer~~ the title and interest in the moneys or assets to a holder of a capital markets services licence for the purpose of securing or otherwise covering ~~or ensuring the repayment or discharge of~~ present or future, actual or contingent or prospective obligations, such moneys or assets will not be regarded as customer’s money or assets (“title transfer collateral arrangement”); ~~and~~

(c) ~~any money or assets provided or otherwise dealt with pursuant to or in order to comply with the Monetary Authority of Singapore’s Guidelines on Margin Requirements for Non-Centrally Cleared OTC Derivatives Contracts (“MAS’s Margin Guidelines”) will not be regarded as customer’s money or assets.~~

*[This is in line with MAS’s position in its Consultation Paper on Enhancements to Regulatory Requirements on Protection of Customer’s Moneys and Assets dated 19 July 2016 that the margin requirements for uncleared derivatives contracts will be as set out in the Margin Guidelines.]*

(4) The holder must explain to the customer in writing the risks associated with the moneys and assets not being treated as customer’s moneys and assets under this Part III and if the customer chooses to have its moneys and/or assets be subject to this Part III, then such moneys and/or assets shall be subject to this Part III.

### *Division 2 — Customer’s Moneys*

#### **Money received on account of customer**

16. —(1) The holder of a capital markets services licence —

(a) shall treat and deal with all moneys received on account of its customer as belonging to that customer;

(aa) where its customer is a person other than an accredited investor, expert investor or institutional investor, shall deposit all moneys received on account of that customer —



~~(i) in connection with any over the counter derivatives contracts executed by the customer, in a trust account;~~

~~(ii) in any other case, in any other trust account or other type of account directed by the customer, that is established in the name of the customer and maintained with a financial institution specified in regulations 17(1) or (2);~~

- (b) where its customer is an accredited investor, expert investor or institutional investor, shall deposit all moneys received on account of that its customer in a trust account or in any other account directed by the customer, provided such account is established in the name of the customer; and

*[MAS in its Response on the Consultation Paper on Enhancements to Regulatory Requirements on Protection of Customer's Moneys and Assets dated 26 May 2017 has stated that it will not allow retail customers to be given the option of opting out of the trust/custody account rules. MAS has also stated that it will modify the proposal to allow a retail customer to direct the holder to deposit his money and assets in an account in the customer's name so as to permit the payment/return of excess moneys and assets to the customer. This modification is not necessary as paragraph (2) below (see highlighted portion) already caters for this. In any event, we do not understand the rationale behind the drafting of paragraph (aa) – specifically, why moneys in connection with OTC derivatives contracts can only be deposited in a trust account. The possibility of excess moneys also exists with OTC derivatives contracts.]*

- (c) shall not commingle moneys received on account of its customer with other funds, or use the moneys as margin or guarantee for, or to secure any transaction of, or to extend the credit of, any person other than the customer.

(2) The holder shall deposit the money received on account of its customer in the trust account no later than the business day immediately following the day on which the holder receives such money or is notified of the receipt of such money, whichever is the later, unless the money has in the meantime been paid to the customer or deposited in an account directed by the customer or unless it is deposited in accordance with regulation 19 or invested in accordance with regulation 20.

(3) In paragraph (2), “business day” means the business day of the holder or, if the custodian with whom the trust account is maintained is closed for business on that day and the holder is unable to deposit the money in the account, the next business day of the custodian.

(4) Moneys received by the holder on account of its customers who are not accredited investors, expert investors or institutional investors ~~may be commingled and deposited in the same trust account.~~

- (a) in connection with derivatives contracts that are listed derivatives contracts under paragraph (1)(aa)(i) ~~may be commingled and deposited in the same trust account~~ or customers' account; and

- (b) ~~under paragraph (1)(aa)(ii) and (b), in any other case,~~ may be commingled and deposited in the same trust account which is distinct and separate from the trust account or customers' account mentioned in sub-paragraph (a). ~~and~~

*[MAS in its 2014 Unlisted Margin Derivatives Response has stated that it will implement Option 3 which requires separate omnibus customer accounts for listed and unlisted products. In line with the underlying rationale for Option 3, the distinction should be between exchange-traded derivatives contracts and cleared OTC derivatives contracts on the one hand and other contracts on the other hand. The need to advance customer moneys as margin applies not only to exchange-traded derivatives contracts but also to cleared OTC derivatives contracts.]*

(4A) Moneys received by the holder on account of its customers who are accredited investors, expert investors or institutional investors may be commingled and deposited in the same trust account or customers' account.

(5) Where the holder provides (i) a customer who is a person other than an accredited investor, expert investor or institutional investor the option of separating the books for any moneys received from or on the account of the customer from the books for any moneys received from or on the account of any other customers of the holder, or (ii) a customer who is an accredited investor, expert investor or institutional investor the option of separating the books for any moneys received from or on the account of the customer in connection with ~~listed over the counter~~ derivatives contracts executed by the customer, from the books for any other moneys received on the account of the customer or from the books for any moneys received from or on the account of any other customers of the holder, the holder shall disclose to the customer –

- (a) the additional costs that the customer has to bear if he chooses such an arrangement; and
- (b) the difference between the level of protection accorded by such an arrangement and that accorded by the arrangement referred to in ~~sub~~ paragraph (4).

*[As Option 3 which applies to retail investors requires separate omnibus accounts for listed and unlisted products, this is a mandatory requirement and not something that the retail customer has the option to opt for.]*

(6) For the avoidance of doubt, an account directed by the customer and that is established in the name of the customer as described in regulation 16(1)(b) is not a trust account or customer's or customers' account and is not subject to any of the provisions of this Part III.

### **Maintenance of trust account with specified financial institutions**

17.—(1) The holder of a capital markets services licence shall maintain a trust account in which it deposits moneys received on account of its customer with —

- (a) a bank licensed under the Banking Act (Cap. 19);
- (b) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186); or

(c) a finance company licensed under the Finance Companies Act (Cap. 108).

(2) Without prejudice to paragraph (1) and subject to the customer's prior written consent, the holder may, for the purpose of depositing moneys received on account of its customer which are denominated in a foreign currency in a trust account or customer's or customers' segregated account, maintain the trust account or customer's or customers' segregated account with a custodian outside Singapore which is licensed, registered or authorised to conduct banking business in the country or territory where the account is maintained.

(3) Paragraph (2) shall not apply to a holder who received moneys which are denominated in a foreign currency on account of a customer who is not an accredited investor, expert investor or institutional investor and in respect of the customer's transactions in any ~~over-the-counter~~ derivatives contracts that are not listed derivatives contracts.

(4) The holder shall before depositing moneys received on account of its customer in the trust account or customer's or customers' segregated account, disclose to its customer –

(a) that the customer's moneys are held by a financial institution specified in paragraph (1) or (2) on behalf of the holder;

(b) whether the customer's moneys are deposited in the same trust account or customer's or customers' segregated account, and commingled with the moneys, of other customers of the holder and the existence of any holding chain ~~and~~;

(c) where the moneys are deposited in the same trust account or customer's or customers' segregated account, and commingled with the moneys, of other customers, the effect of such pooling in the event of insolvency of the financial institution specified in paragraph (1) or (2), as the case may be, with whom the account is maintained;

(d) the risks associated with the arrangements adopted by the holder in respect of the customer's moneys; and

(e) where the customer's moneys are placed in a ~~custody~~ trust account or customer's or customers' segregated account with a custodian outside Singapore pursuant to paragraph (2), that in relation to the customer's moneys, the laws and practices of the jurisdiction under which the custodian is licensed, registered or authorised, may not provide protection to the customer in relation to its moneys comparable to the protection accorded to the customer under these Regulations.

### **Suitability of specified financial institutions**

17A.—(1) The holder of a capital markets services licence which maintains its customer's moneys in a trust account or customer's or customers' account under regulation 17 shall —

(a) before opening the trust account or customer's or customers' account, conduct due diligence as to the suitability of the financial institution specified in paragraph (1) or (2), as the case may be, for the holder's customer or class of customers;

- (b) on periodic basis, conduct due diligence to satisfy itself that the financial institution specified in paragraph (1) or (2), as the case may be, remains suitable for the holder's customer or class of customers;
- (c) document the procedures for the conduct of due diligence referred to in subparagraph (1)(a) and (b), including the frequency of the periodic reviews, and the approval of the holder's senior management for such procedures; and
- (d) maintain records of the grounds on which it has satisfied itself of the suitability of the financial institution specified in paragraph (1) or (2), as the case may be.

~~(2) Paragraph (1) does not apply when the holder of a capital markets services licence maintains the moneys of the holder's customer who is an institutional investor, accredited investor or expert investor in a deposit account established by the customer in the name of that customer and maintained with a financial institution specified in paragraph (1) or (2).~~

### Notification and acknowledgment from specified financial institutions

**18.—(1)** Where the holder of a capital markets services licence opens a trust account with a financial institution specified in regulation 17(1), the holder shall, before depositing moneys received on account of its customer in the account, give written notice to the financial institution and obtain an acknowledgment from the financial institution that —

- (a) all moneys deposited in the trust account are held on trust by the holder for its customer and the financial institution cannot exercise any right of set-off against the moneys for any debt owed by the holder to the financial institution; and
- (b) the account is designated as a trust account, or a customer's or customers' account, which shall be distinguished and maintained separately from any other account in which the holder deposits its own moneys.

~~(2) Where the holder of a capital markets services licence opens a trust account or customer's **or customers'** segregated account with a custodian outside Singapore pursuant to regulation 17(2), the holder shall, before depositing moneys received on account of its customer in the trust account or customer's **or customers'** segregated account, give written notice to the custodian and obtain an acknowledgment from the custodian that —~~

- ~~(a) all moneys deposited in the account are held by the holder for its customer and the custodian cannot exercise any right of set-off against the moneys for any debt owed by the holder to the financial institution; and~~
- ~~(b) the account is designated as a customer's or customers' account, which shall be distinguished and maintained separately from any other account in which the holder deposits its own moneys.~~

### Customer's money held with a clearing house, etc.

**19.** Notwithstanding regulations 16 and 17—, the holder of a capital markets services licence to deal in capital markets products may deposit moneys received on account of its customer with an approved clearing house, a recognized clearing house, an overseas clearing house or a member of an approved exchange, a

recognised market operator or an overseas exchange, or a member of an approved clearing house, a recognised clearing house, or an overseas clearing house —

- (a) for the purpose of facilitating the continued holding of a position, or facilitating of a transaction, in any capital markets products traded, or to be entered, for the customer on the approved exchange, recognised market operator or overseas exchange;
  - (b) for the purpose of facilitating the continued holding of a position in any capital market products cleared, or to be cleared, by the approved clearing house, recognised clearing house or overseas clearing house for the customer;
  - (c) for the settlement of a position or transaction in any capital markets products traded, or to be entered, for the customer, on the approved exchange, recognised market operator, or overseas exchange, or any capital markets products, ~~an over-the-counter derivatives contract~~ cleared, or to be cleared, by the approved clearing house, recognised clearing house or overseas clearing house, for the customer; or
  - (d) for any other purpose specified under the business rules and practices of the approved exchange, recognised market operator, overseas exchange, approved clearing house, recognised clearing house, or overseas clearing house, as the case may be.
- ~~(a) the holder of a capital markets services licence to trade in futures contracts may deposit moneys received on account of its customer with a clearing house, a member of a futures exchange or a member of an overseas futures exchange —~~
- ~~(i) for the purpose of facilitating the continued holding of a futures position or facilitating a transaction in a futures contract to be entered into for the customer;~~
  - ~~(ii) for the settlement of a transaction in a futures contract for the customer; or~~
  - ~~(iii) for any other purpose specified under the business rules and practices of the clearing house, futures exchange or overseas futures exchange, as the case may be; and~~
- ~~(b) the holder of a capital markets services licence to deal in securities may deposit moneys received on account of its customer with a clearing house or a member of a securities exchange for a purpose specified under the business rules and practices of the clearing house or securities exchange, as the case may be.~~

### Investment of moneys received on account of customers

**20.**—(1) Notwithstanding regulations 16 and 17, the holder of a capital markets services licence may hold moneys received on account of its customer on trust for the customer, including moneys which the holder may from time to time advance to the customer's trust account in accordance with regulation 23, in any of the following forms of investment:

- (a) any Government securities;
- (b) any debt instrument of the government of the country of **an organised market** ~~the securities market or futures market, or securities exchange or futures exchange~~, on which the holder normally transacts its business; or

(c) any other securities or instrument as the Authority may from time to time, by a guideline issued by the Authority, determine.

(2) The holder of a capital markets services licence maintaining any moneys received on account of its customer in any of the forms of investment specified in paragraph (1) shall keep a record of all transactions relating to such moneys, including —

- (a) the date on which the transaction was made;
- (b) where applicable, the name of the person through whom the transaction was made;
- (c) the amount of money invested in the transaction;
- (d) a description of the transaction;
- (e) the place, if any, where the moneys and assets are kept;
- (f) where applicable, the date on which the subject-matter of the transaction was realised or otherwise disposed of and the amount of money received from the realisation or disposal, if any; and
- (g) where applicable, the name of the person, if any, to whom or through whom the subject-matter of the transaction was disposed of.

### **Title transfer collateral arrangement ~~on~~ customer's moneys**

**20A.** The holder of a capital markets services licence shall not enter into any ~~contract, arrangement, or transaction, for the purpose of which is to transfer title to, or right or interest in,~~ title transfer collateral arrangement in respect of the moneys of a customer who is not an accredited investor, expert investor or institutional investor, ~~to any other person.~~ For the avoidance of doubt, nothing herein shall prevent the holder from entering into a title transfer collateral arrangement in respect of such moneys pursuant to or in order to comply with MAS's Margin Guidelines.

### **Withdrawal of money from trust account**

**21.** —(1) The holder of a capital markets services licence shall not withdraw any money from a customer's trust account ~~or customer's account or customers' account~~ except for the purpose of —

- (a) making a payment to any person entitled thereto;
- (b) making a payment to meet an obligation of a customer whose money is deposited in that account, being an obligation that arises from any dealing in ~~capital markets products securities, trading in futures contracts or leveraged foreign exchange trading,~~ as the case may be, by the holder for the customer;
- (c) defraying its brokerage and other proper charges;
- (d) ~~subject to paragraph (2),~~ making a payment to any other person or account in accordance with the written direction of the customer;
- (e) reimbursing the holder any moneys that it has advanced to the account and any interest and returns that it is entitled to by virtue of regulation 23, so long as such withdrawal does not result in the account becoming under-margined or under-funded;

- (f) making a deposit in accordance with regulation 19 or an investment in accordance with regulation 20; or
- (g) making a payment or withdrawal that is authorised by law.

(2) ~~Sub-paragraph (1)(d) does not apply where —~~

- (a) the customer is not an accredited investor, expert investor or institutional investor; and
- (b) ~~the transfer of the asset is for the purpose of meeting any obligation of the holder under any over-the-counter derivatives contracts executed for or on behalf of such customer or any other customer~~ the moneys have been received in connection with a derivatives contract that is not a listed derivatives contract and such payment would or may result in the holder using the moneys as margin or guarantee for, or to secure any transaction of, or to extend the credit of, any person other than the customer and (absent the customer's written direction) would have been in breach of regulation 16(1)(c).

*[Given the purpose, as stated in its 2014 Unlisted Margin Derivatives Response, that retail investors will no longer be allowed to consent to the use of their money and assets for onward hedging by the holder, we submit that the amended wording is preferable. The current language is broad and open to varying interpretations.]*

### **Interest arising from trust account, etc.**

22.—(1) Subject to any agreement between the holder of a capital markets services licence and its customer, all interest earned from the maintenance of the moneys received on account of the customer in a trust account, and all returns from the investment of moneys received on account of the customer in accordance with regulation 20, shall accrue to the customer.

*[S 709/2010 wef 26/11/2010]*

(2) The holder of a capital markets services licence shall take all reasonable steps to ensure that the interest and returns accrued to the customer under paragraph (1) are paid to or held for the benefit of the customer, as the case may be.

*[S 709/2010 wef 26/11/2010]*

### **Placement of licensee's own money in trust account**

23.—(1) Notwithstanding regulation 16(1), the holder of a capital markets services licence may from time to time advance sufficient money to a customer's trust account from its own funds —

- (a) to prevent the customer's trust account from being under-margined or under-funded; or
- (b) to ensure the continued maintenance of that account in a case where it is maintained with —
  - (i) a financial institution specified in regulation 17(1); or
  - (ii) a custodian specified in regulation 17(2).

[S 373/2005 wef 01/07/2005]

(2) The holder may retain any interest earned and return arising on the moneys which it has so advanced to the account.

(3) Subject to regulation 21(1)(e), any money belonging to the holder that is deposited into a customer's trust account may be used for the purpose of payment to the customer.

### **No effect on lawful claims or liens**

24. Nothing in this Division shall be construed as avoiding or affecting any lawful claim or lien which any person has in respect of any money held in a trust account or customer's or customers' account in accordance with this Division or any money belonging to a customer before the money is paid into a trust account or customer's or customers' account.

## *Division 3 — Customer's Assets*

### **Application of this Division**

25.—(1) This Division shall apply to customer's assets received by the holder of a capital markets services licence to be held on account of the customer or as collateral for any amount owed by the customer to the holder.

(2) In this Division, "custodian" means a person referred to in regulation 27(1), (2) or (3), as the case may be.

### **Duties of holder on receipt of customer's assets**

26.—(1) The holder of a capital markets services licence shall —

- (a) deposit a customer's assets in a custody account held on trust for the customer;
- (b) ensure that the customer's assets are not commingled with any other assets;
- and

[S 709/2010 wef 26/11/2010]

- (c) make arrangements for a custodian to maintain the custody account.

(2) The holder shall deposit the customer's assets in the custody account no later than the business day immediately following the day on which the holder receives such assets or is notified of the receipt of such assets, whichever is the later, unless the assets

- (a) have in the meantime been returned to the customer; or

- (b) are deposited in accordance with regulation 30 or where the customer is an accredited, investor, expert investor or institutional investor—subject to paragraph (2A), deposited in an account directed by the customer, provided such account is established in the name of the customer.



~~(2A) Notwithstanding paragraph (2), where the customer is not an accredited investor, expert investor or institutional investor, the holder shall deposit the customer's assets in an account directed by the customer if and only if the account is established in the name of the customer and maintained with a custodian specified in regulation 27(1) or (3).~~

~~have in the meantime been returned to the customer or deposited in an account directed by the customer or unless it is deposited in accordance with regulation 30.~~

(3) In paragraph (2), "business day" means the business day of the holder or, if the custodian with whom the custody account is maintained is closed for business on that day and the holder is unable to deposit the assets in the account, the next business day of the custodian.

(4) A customer's assets may be commingled with the assets of another customer and deposited in the same custody account.

(5) For the avoidance of doubt, an account directed by the customer and that is established in the name of the customer as described in regulation 26(2)(b) is not a custody account and is not subject to any of the provisions of this Part III.

### Maintenance of custody account with specified custodians

27.—(1) Subject to regulation 30, the holder of a capital markets services licence shall maintain a custody account in which it deposits a customer's assets with —

- (a) a bank licensed under the Banking Act (Cap. 19);
- (b) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);
- (c) a finance company licensed under the Finance Companies Act (Cap. 108);
- (d) a depository agent within the meaning of section ~~81SF130A~~ of the ~~Act Companies Act (Cap. 50)~~ for the custody of ~~capital markets products~~ securities listed for quotation or quoted on the Singapore Exchange Securities Trading Limited or deposited with the Central Depository (Pte) Ltd;
- (e) an approved trustee for a collective investment scheme within the meaning of section 289 of the Act; or
- (f) any person licensed under the Act to provide custodial services ~~for securities~~.

(2) Without prejudice to paragraph (1), the holder may maintain the custody account itself where it is licensed under the Act to provide custodial services or is exempt from the licensing requirement when providing custodial services pursuant to section 99(1) of the Act ~~for securities~~.

(3) Without prejudice to paragraph (1) and subject to the customer's prior written consent, the holder may, for the purpose of the safe custody of the customer's assets denominated in a foreign currency, maintain the custody account with a custodian outside Singapore which is licensed, registered or authorised to act as a custodian in the country or territory where the account is maintained.

(4) ~~The holder shall before depositing assets received on account of its customer in~~

the custody account, disclose to its customer—

- (a) that the customer's assets are held by a custodian specified under paragraph (1) or (3) on behalf of the holder;
- (b) whether the customer's assets are deposited in the same custody account, and commingled with the assets of other customers of the holder and the existence of any holding chain~~and~~;
- (c) where the assets are deposited in the same custody account, and commingled with the assets of other customers, the risks of such pooling in the event of insolvency of the custodian specified under paragraph (1) or (3), as the case may be, with whom the account is maintained;
- (d) the risks associated with the arrangements adopted by the holder in respect of the customer's assets; and
- (e) where the customer's assets are placed in a custody account with a custodian outside Singapore pursuant to paragraph (3), that in relation to the customer's assets, the laws and practices of the jurisdiction under which the custodian is licensed, registered or authorised, may not provide protection to the customer in relation to its assets comparable to the protection accorded to the customer under these Regulations.

### Notification and acknowledgment from specified custodians

**28.—(1)** Where the holder of a capital markets services licence opens a custody account with a custodian specified in regulation 27(1), the holder shall, before depositing a customer's assets in the account, give written notice to the custodian, and obtain an acknowledgment from the custodian that —

- (a) all assets deposited in the custody account are held on trust by the holder for its customer; and
- (b) the account is designated as a trust account, or a customer's or customers' account, which shall be distinguished and maintained separately from any other account in which the holder deposits its own assets.

(2) Where the holder of a capital markets services licence opens a custody account with a custodian outside Singapore pursuant to regulation 27(3), the holder shall, before depositing a customer's assets in the custody account, give written notice to the custodian and obtain an acknowledgment from the custodian that —

- (a) all assets deposited in the custody account are held by the holder for its customer; and
- (b) the account is designated as a customer's or customers' account, which shall be distinguished and maintained separately from any other account in which the holder deposits its own assets.

### Suitability of custodian

**29.—(1)** The holder of a capital markets services licence which maintains its customer's assets in a custody account under regulation 27 (1) or (3) shall —

- (a) before opening the custody account, conduct due diligence as to the

custodian's suitability for the holder's customer or class of customers; ~~and~~

- (aa) on a periodic basis, conduct due diligence to satisfy itself that the custodian specified under ~~regulation paragraphs~~ 27(1) ~~or~~ (3), ~~as the case may be~~, remains suitable for the holder's customer or class of customers;
- (ab) document the procedures for the conduct of due diligence referred to in subparagraph (1)(a) and ~~(aa)~~, including the frequency of the periodic reviews, and the approval of the holder's senior management; and
- (b) maintain records of the grounds on which it has satisfied itself of the suitability of the custodian ~~specified under paragraphs~~ 27(1) or (3), ~~as the case may be~~.

~~(2) Paragraph (1) shall not apply when the holder of a capital markets services licence who deposits assets of the holder's customer who is an institutional investor, accredited investor or expert investor in a trust account established by that customer and maintained in the name of that customer with a custodian specified under paragraphs 27(1) and (3).~~

### Customer's assets held with clearing house, etc.

#### 30. Notwithstanding regulations 26 and 27 —

- (a) the holder of a capital markets services licence to deal in capital markets products may deposit its customer's assets with an approved clearing house, a recognised clearing house, an overseas clearing house or a member of an approved exchange, a recognised market operator or an overseas exchange, or a member of an approved clearing house, a recognised clearing house, or an overseas clearing house—
  - (i) for the purpose of facilitating the continued holding of a position, or facilitating of a transaction, in ~~a~~ any capital markets products traded, or to be entered, for the customer on the approved exchange, recognised market operator or overseas exchange ~~entered~~;
  - (ii) for the purpose of facilitating the continued holding of a position in any capital markets product cleared, or to be cleared, by the approved clearing house, recognised clearing house or overseas clearing house for the customer;
  - (iii) for the settlement of a position or transaction in any capital markets products traded, or to be entered, ~~for the customer~~ on the approved exchange, recognised market operator or overseas exchange, or ~~any capital markets products~~ ~~an over-the-counter derivatives contract~~ cleared, ~~or to be cleared~~, by the approved clearing house, the recognised clearing house or overseas clearing house for the customer; or
  - (iv) for any other purpose specified under the business rules and practices of the approved exchange, recognised market operator, overseas exchange, approved clearing house, recognised clearing house or overseas clearing house, as the case may be.

~~Notwithstanding regulations 26 and 27 —~~

- ~~(a) the holder of a capital markets services licence to trade in futures contracts may deposit its customer's assets with a clearing house, a member of a futures exchange or a member of an overseas futures exchange —~~
- ~~(i) for the purpose of facilitating the continued holding of a futures position or facilitating a transaction in a futures contract to be entered into for the customer;~~
  - ~~(ii) for the settlement of a transaction in a futures contract for the customer; or~~
  - ~~(iii) for any other purpose specified under the business rules and practices of the clearing house, futures exchange or overseas futures exchange, as the case may be; and~~
- ~~(b) the holder of a capital markets services licence to deal in securities may deposit its customer's assets with a clearing house or a member of a securities exchange for a purpose specified under the business rules and practices of the clearing house or securities exchange, as the case may be.~~

### Customer agreement

**31.**—(1) Where the holder of a capital markets services licence is licensed to provide custodial services ~~for securities~~, the holder shall, before providing custodial services for its customer's assets, notify the customer of the terms and conditions that would apply to the safe custody of the customer's assets.

(2) The terms and conditions that apply to the provision of custodial services ~~for securities~~ by such a holder to its customer shall include —

- (a) the arrangements for the giving and receiving of instructions by or on behalf of the customer in respect of the services to be provided including, where applicable, the arrangements for the giving of authority by the customer to another person and the extent of that authority and any limitation thereto;
- (b) any lien over or security interest in the assets by the holder or a third party;
- (c) the circumstances under which the holder may realise the assets held as collateral to meet the customer's liabilities to the holder;
- (d) where the customer's assets are to be held with a custodian other than the holder, the liability of the holder in the event of default by the custodian;
- (e) where the holder intends to commingle the customer's assets with those of other customers and maintain such assets with a custodian other than itself, a statement that the customer's interest in the assets may not be identifiable by separate certificates, or other physical documents or equivalent electronic records, and a condition that the holder shall maintain records of the customer's interest in the assets that have been commingled;
- (f) the person in whose name the assets are registered;
- (g) the arrangements in relation to claiming and receiving dividends, interest payments and other entitlements accruing to the customer, and the exercise of any right and power arising from ownership of the assets;

- (h) the arrangements for the provision of information relating to the custody of the asset to the customer; and
- (i) all applicable fees and costs for the custody of the assets.

### **Custody agreement**

**32.**—(1) Subject to paragraph (3), before placing its customer's assets in a custody account with a custodian, the holder of a capital markets services licence shall agree with the custodian, in writing, to the following:

- (a) that the account shall be designated as that of the customer or customers;
- (b) that the custodian shall hold and record the assets in accordance with the holder's instructions; and the records shall identify the assets as belonging to the holder's customer **or customers** and the assets shall be kept separate from any asset belonging to the holder or to the custodian;
- (c) that the custodian shall not claim any lien, right of retention or sale over any asset standing to the credit of the custody account, except —
  - (i) where the holder has obtained the customer's written consent and notified the custodian in writing of the written consent; or
  - (ii) in respect of any charges as agreed upon in the terms and conditions relating to the administration or custody of the asset;
- (d) that the custodian shall provide sufficient information to the holder in order that the holder may comply with its record-keeping obligations under the Act or these Regulations or under any other law;
- (e) the person in whose name the assets are registered;
- (f) that the custodian shall not permit any withdrawal of the assets from the custody account, except for delivery of the assets to the holder or on the holder's written instructions;
- (g) the arrangements for dealing with any entitlement arising from the assets in the custody account, such as coupon or interest payment;
- (h) the extent of the custodian's liability in the event of any loss of the assets maintained in the custody account caused by fraud or negligence on the part of the custodian or any of the custodian's agents; and
- (i) the applicable fees and costs for the custody of the assets.

*[S 709/2010 wef 26/11/2010]*

(2) The holder of a capital markets services licence referred to in paragraph (1) shall, before depositing its customer's assets in a custody account, disclose to the customer the terms and conditions agreed with the custodian.

(3) Paragraph (1) shall not apply to the holder of a capital markets services licence who is licensed to provide custodial services in relation to its provision of such services for its customer's assets.

[S 709/2010 wef 26/11/2010]

### **Lending of customer's ~~specified products~~ securities**

**33.**—(1) Notwithstanding regulations 26 and 27, the holder of a capital markets services licence may, subject to the other provisions of this regulation, lend or arrange for a custodian to lend its customer's assets which are ~~specified products~~ securities.

(2) The holder of a capital markets services licence shall not lend or arrange for a custodian to lend the ~~specified products~~ securities of a customer, unless it has —

- (a) explained the risks involved to the customer; and
- (b) obtained the customer's written consent to do so.

(3) Paragraph (2)(a) shall not apply to a holder of a capital markets services licence which lends or arranges for a custodian to lend the ~~specified products~~ securities of a customer who is an accredited investor, ~~expert investor or institutional investor~~.

(4) The holder of a capital markets services licence which lends its customer's ~~specified products~~ securities shall, before the commencement of such lending, enter into an agreement with that customer setting out the terms and conditions for such lending with the customer whose ~~specified products~~ securities are to be lent.

(5) The holder of a capital markets services licence which arranges for a custodian to lend ~~specified products~~ securities of the holder's customer shall, before the commencement of such lending —

- (a) enter into an agreement with the custodian setting out the terms and conditions for the lending; and
- (b) disclose these terms and conditions to the customer.

### **Mortgage of customer's assets**

**34.**—(1) Notwithstanding regulations 26 and 27, the holder of a capital markets services licence may, in the circumstances specified in paragraphs (2), ~~and (4)~~ **and (5)** (but not in any other circumstances), mortgage, charge, pledge or hypothecate its customer's assets.

(2) Subject to paragraph (3) and any agreement between the holder of a capital markets services licence and its customer, where the holder is owed money by the customer, the holder may mortgage, charge, pledge or hypothecate the customer's assets but only for a sum not exceeding the amount owed by the customer to it.

(3) The holder of a capital markets services licence does not contravene paragraph (2) by reason only of an excess arising on any day through the reduction of the amount owed by the customer to the holder on that day, but only if the holder pays or transfers to the mortgagee, chargee or pledgee concerned money or assets of an amount sufficient to reduce such excess as promptly as practicable after the excess occurs and, in any event, no later than the next business day.

(4) The holder of a capital markets services licence may mortgage, charge, pledge or hypothecate the customers' assets together if and only if —

- (a) the sum of the claims to which such customers' assets are subject as a result of such mortgage, charge, pledge or hypothecation does not exceed the aggregate amounts owed by the customers to the holder; ~~and~~ and
- (b) the claim to which each customer's assets are subject as a result of such mortgage, charge, pledge or hypothecation does not exceed the amount owed by the customer to the holder. ~~;~~ and

~~(e)(5) Where the customer is not an accredited investor, expert investor or institutional investor, the holder may mortgage, charge, pledge or hypothecate the customer's assets only if the holder has informed the customer who is not an accredited investor, expert investor or institutional investor that the holder may mortgage, charge, pledge or hypothecate the customer's assets subject to the limit stipulated in sub-paragraph (2), explained to the customer the risks arising from mortgaging, charging, pledging or hypothecating the customer's assets involved, and obtained the customer's written consent to do so.~~

~~(6) In paragraph (3), "business day" means the business day of the holder or, if the bank or custodian with whom the mortgagee, chargee or pledgee maintains its relevant account is closed for business on that day and the holder is unable to make such payment or transfer into such account, the next business day of the relevant bank or custodian.~~

### **Title transfer collateral arrangements on customer's assets**

**34A.** ~~The holder of a capital markets services licence shall not enter into any contract, arrangement, or transaction, for the purpose of which is to transfer title to, or right or interest in, title transfer collateral arrangement in respect of the assets of a customer who is not an accredited investor, expert investor or institutional investor, to any other person unless the contract, arrangement, or transaction, is in connection with the borrowing or lending of customer's specified products pursuant to regulation 45. For the avoidance of doubt, nothing herein shall prevent the holder from entering into a title transfer collateral arrangement in respect of such assets pursuant to or in order to comply with MAS's Margin Guidelines.~~

### **Withdrawal of customer's assets**

**35.—(1)** The holder of a capital markets services licence shall not withdraw any of its customer's assets from a custody account except for the purpose of —

- (a) transferring the asset to any person entitled thereto;
- (b) meeting the customer's obligation arising from any dealing in **capital markets**

~~products securities, trading in futures contracts or leveraged foreign exchange trading, as the case may be,~~ by the holder for the customer;

- (c) ~~subject to paragraph (2),~~ transferring the asset to any person or account in accordance with the ~~customer's~~ written directions ~~of the customer~~;
- (d) ~~securities~~ lending of customer's specified products in accordance with regulation 33;
- (e) mortgaging, charging, pledging or hypothecating the assets in accordance with regulation 34;
- (f) making a deposit in accordance with regulation 30; or
- (g) making a transfer that is authorised by law.

(2) ~~Sub-p~~ Paragraph (1)(c) does not apply where —

- (i) the customer is not an accredited investor, expert investor or institutional investor; and
- (ii) ~~the transfer of the asset is for the purpose of meeting any obligation of the holder under any over the counter derivatives contracts executed for or on behalf of such customer or any other customer the assets have been received in connection with a derivatives contract that is not a listed derivatives contract and such transfer would or may result in the holder using the assets as margin or guarantee for, or to secure any transaction of, or to extend the credit of, any person other than the customer and (absent the customer's written direction) would have been in breach of regulation 16(1)(c).~~

*[See comments on regulation 21.]*

### No effect on lawful claims or liens

36. Nothing in this Division shall be construed as avoiding or affecting any lawful claim or lien which any person has in respect of any asset held in a custody account in accordance with this Division or any asset belonging to a customer before the asset is ~~paid~~ transferred into a custody account.

### *Division 4 — Miscellaneous*

#### ~~Daily Ce~~omputation for trust accounts and custody accounts

37.—(1) For the purposes of Divisions 2 and 3 ~~and subject to paragraphs (1B) and (1C),~~ the holder of a capital markets services licence ~~to deal in capital markets products to trade in futures contract or carry out leveraged foreign exchange trading~~ shall, at such intervals as it determines to be appropriate but no less frequently than at the close of every business day, compute —

- (a) the total amount of moneys ~~and assets~~ ~~and assets~~ deposited in its customers' trust accounts ~~or customer's or customers' accounts and custody accounts respectively~~ ~~and custody accounts respectively~~;
- (b) the total amount of its customers' moneys ~~and its customers' assets~~ ~~and its customers' assets~~ required under Part V of the Act and these Regulations to



be deposited in trust accounts or customer's or customers' accounts and custody accounts respectively ~~and custody accounts respectively~~; and

- (c) the respective amounts of the holder's residual interest in the trust accounts or customer's or customers' accounts and custody accounts ~~and custody accounts~~,

as at the end of such interval.

(1A) For the purposes of Divisions 2 and 3, any other holder of a capital markets services licence shall make the above computations at the following intervals—

(a) daily in respect of moneys deposited in its customers' trust accounts or customer's or customers' accounts;

(b) subject to paragraph (1B), monthly in respect of assets deposited in custody accounts.

~~(1A) For the purposes of Divisions 2 and 3 and subject to paragraphs (1B) and (1C), the holder of a capital markets services licence shall, at such intervals as it determines to be appropriate but no less frequently than at the close of every month, compute—~~

~~(a) the total amount of assets deposited in its customers' custody accounts respectively;~~

~~(b) the total amount of its customers' assets required under Part V of the Act and these Regulations to be deposited in custody accounts respectively; and~~

~~(c) the respective amounts of the holder's residual interest in the custody accounts,~~

~~as at the end of such interval.~~

~~(1B) The holder of a capital markets services licence shall, at such intervals as it determines to be appropriate but no less frequently than at the close of every business day, compute in respect of the customer's transaction in capital markets products that are futures contracts, spot foreign exchange contracts for the purposes of leveraged foreign exchange trading or over the counter derivatives contracts where the underlying thing is a currency or currency index—~~

~~(a) the total amount of moneys and assets deposited in its customers' trust accounts and custody accounts respectively;~~

~~(b) the total amount of its customers' moneys and its customers' assets required under Part V of the Act and these Regulations to be deposited in trust accounts and custody accounts respectively; and~~

~~(c) the respective amounts of the holder's residual interest in the trust accounts and custody accounts,~~

~~as at the end of such interval.~~

(1BC) Where the holder deposits its customer's assets with a central securities depository and receives a valuation report on a daily basis from the central securities depository, the holder shall, at such intervals as it determines to be appropriate but no less frequently than at the close of every business day, carry out reconciliation between the records of the holder and those of the central securities depository in respect of such assets.

- (2) The holder shall complete the computation referred to in ~~paragraph(1)~~ ~~(a)~~ ~~(b)~~ before noon of the business day immediately after the month ends; and
- (b) paragraphs (1), (1A)(a) and (1B) ~~and (1C)~~ before noon of the next business day and such computation with all supporting data shall be kept by the holder for the period specified in section 102(3) of the Act.
- (3) ~~Without prejudice to paragraph (1A), w~~ Where the information on the value of the ~~relevant customer's asset~~ ~~capital markets products~~ is only available after the business day specified in paragraph (2)(a) ~~or 2(b)~~, the holder of the capital markets services licence shall perform the computation based on the position in that ~~asset~~ ~~products~~. *[The value of the relevant customer's assets may not be available for both the daily and monthly computations.]*

*[In its 2014 Unlisted Margin Derivatives Response, MAS has stated that its intention is to expand the daily computation requirement from trading in futures contracts and leveraged foreign exchange trading to include dealing in securities. Thus, the daily computation requirement should apply to dealing in capital market products.]*

### Customer's moneys and assets held by clearing house

**38.**—(1) The holder of a capital markets services licence which is a member of a ~~clearing facility~~ ~~clearing house~~ shall, in respect of such market contracts as may be specified by the ~~clearing facility~~ ~~clearing house~~, inform the ~~clearing facility~~ ~~clearing house~~ in the manner determined by the ~~clearing facility~~ ~~clearing house~~—

- (a) whether a market contract that is being cleared by the ~~clearing facility~~ ~~clearing house~~ is a customer's contract; and
- (b) whether any money or asset being deposited with or paid to the ~~clearing facility~~ ~~clearing house~~ is deposited or paid in respect of or in relation to the customer's contract.

(2) In this regulation —

“customer's contract” means —

- (a) a contract to which a customer of the holder is a party; or
- (b) a contract to which any other holder of a capital markets services licence to deal in ~~capital markets products~~ ~~securities or trade in futures contracts~~ is a party and which is cleared through the first-mentioned holder;

“market contract” has the same meaning as in section 48(1) of the Act.

*[S 709/2010 wef 26/11/2010]*

## PART IV

### CONDUCT OF BUSINESS

#### Books of holder of capital markets services licence

**39.**—(1) For the purposes of Division 1 of Part V of the Act, the holder of a capital

markets services licence shall keep books in the English language which contain the following, where applicable:

- (a) particulars of every customer, including particulars that satisfy such notices and guidelines as may be issued by the Authority under the Act;
- (b) the name of any person —
  - (i) guaranteeing the settlement of any amount owed in a customer's account in respect of which a regulated activity is carried out by the holder;
  - (ii) who can give instructions to the holder on the carrying out of a regulated activity with respect to a customer's account; or
  - (iii) who has trading authority or exercises any control with respect to a customer's account;
- (c) *[Deleted by S 543/2003]*
- (d) particulars of every transaction other than over-the-counter derivatives contracts *[Covered by (1)(k)]* carried out with or on behalf of customers, including —
  - (i) a description and the quantity of the assets or underlying thing(s) that are the subject of the transaction;
  - (ii) the price and fee arising from the transaction;
  - (iii) the name of the customer with whom or on whose behalf the transaction is entered into;
  - (iv) the name of the counterparty to the transaction; and
  - (v) the transaction date and settlement or delivery date;
- (e) a separate record maintained for each customer stating, where applicable —
  - (i) the amount and description of any money and each asset paid or deposited in the trust account or customer's or customers' account and custody account as required by regulations 16 and 26 respectively and the date of such payment or deposit;
  - (ii) the date and quantity of each transfer of assets from or to the ~~trust account and~~ custody account arising from any asset borrowing or lending activity or otherwise;
  - (iii) the date, amount and purpose of each withdrawal from the trust account or customer's or customers' account or custody account; ~~and~~
  - (iv) the date and amount of, and the reason for, each disposal of collateral from the trust account or customer's or customers' account or custody account;
  - (v) ~~whether the customer has his or her own trust~~ or customer's or custody account or shares the same trust or customers' account or custody account with other customers of the holder; and
  - (vi) ~~the names~~ of all relevant financial institutions specified in

~~regulation paragraph 17(1) or (2) and custodians specified under regulation paragraph 27(1) and (3) with whom the holder deposits the moneys and assets of the holder's customers.~~

- (f) particulars of each asset that is not the property of the holder and for which the holder or any nominee controlled by the holder is accountable, indicating by whom and for whom the asset or the document of title to the asset is held and the extent to which it is held for safe custody by a third party or mortgaged, charged, pledged or hypothecated in accordance with regulation 34;
- (g) particulars of every underwriting and placement transaction entered into by the holder including, where applicable —
- (i) the amount which the holder committed to underwrite;
  - (ii) the amount underwritten due to under-subscription;
  - (iii) the amount allotted to each subscriber;
  - (iv) the amount placed with each placee; and
  - (v) the amount subscribed by each subscriber or placee (including any related company);
- (h) particulars of every proprietary transaction in securities or units in a collective investment scheme of the holder including, where applicable —
- (i) the description and quantity of the assets concerned;
  - (ii) the price and fee arising from the transaction;
  - (iii) the transaction date and settlement or delivery date;
  - (iv) the name of the counterparty to the transaction; and
  - (v) the realised or unrealised gain or loss;
- (i) particulars of all income and expenses of the holder; ~~and~~
- (j) particulars of all assets and liabilities (including contingent liabilities) of the holder and, in the case of assets, showing by whom these assets or the documents of title to these assets are held and, where they are held by some other person, whether or not they are held as security against loans or advances; ~~and~~
- (k) ~~particulars of every transaction in over-the-counter derivatives contract carried out on behalf of or with customers including, where applicable –~~
- (i) ~~counterparty identification and other documents relating to the establishment of business relations; and~~
  - ~~(ii) the price at which the over-the-counter derivatives contract was executed;~~
  - ~~(iii) the fees or commission and other expenses in respect of such transaction; and~~
  - (ii) all particulars relating to the terms and conditions of the transactions in the over-the-counter derivatives contracts, including all payments ~~and~~

where the transaction is cleared, all clearing particulars and where the transaction is not cleared, margin requirements relating to the transaction.

(2) The holder shall also keep books in the English language which contain the following documents, where applicable:

(a) for each customer, ~~other than one who is an accredited investor,~~ every power of attorney or other document authorising the holder or its representative to operate the account of the customer on a discretionary basis;

(b) every written agreement, or copy thereof, entered into by the holder with its customer;

*(ba) every acknowledgment of a customer received under regulation 47DA(1)(c);*

(c) every acknowledgment of a customer received under regulation 47E(1)(iib) which shall be in Form 13;

*[S 709/2010 wef 26/11/2010]*

(d) every acknowledgment of a customer received under regulation 47E(2) which shall be in Form 14;

*[S 709/2010 wef 26/11/2010]*

(e) every statement acknowledging receipt of assets from a customer indicating the person in whose name the assets are registered;

(f) every order, whether filled, unfilled, amended or cancelled, which has been prepared or received in the course of the business of the holder;

(g) subject to paragraph (2a), every report, letter, circular, memorandum, publication, advertisement and other literature or advice distributed by the holder to any existing or prospective customer, indicating the date of publication;

(h) subject to paragraph (2a), every report, statement, submission, letter, journal, ledger, invoice, and other record, data or memoranda, which has been prepared or received in the course of business of the holder;

(i) written confirmation of every ~~transaction in a capital markets product securities transaction, futures transaction or transaction in connection with leveraged foreign exchange trading~~ and every purchase and sale contract note and statement of account in respect of such transaction, being a transaction to which any of the following is a party:

(i) the holder;

(ii) except where the holder is one referred to in sub-paragraph (iii), an executive director of the holder, if the transaction is a personal transaction of such executive director; and

(iii) where the holder is a branch or subsidiary of a foreign company with its head office located outside Singapore, an executive director of the holder who is directly involved in its operations and business, if the transaction is a personal transaction of such executive director;

- (j) written confirmation of every transaction referred to in paragraph (1)(d) prepared by the holder as principal or as agent of a customer, and every purchase and sale contract note and statement of account in respect of such transaction prepared by the holder as principal or as agent of the customer, as the case may be, or received from any other party, whether licensed in Singapore or elsewhere; and
- (k) in respect of every underwriting and placement transaction entered into by the holder, documentation stating the basis of allotment to each subscriber or placee, as the case may be.

(2a) Nothing in paragraphs (1)(g) and (h) shall be read as requiring the holder to keep or maintain pre-execution information in connection with over-the-counter derivatives contracts.

*[MAS, in its Response on the Consultation Paper on the Regulatory Framework for Intermediaries Dealing in OTC Derivative Contracts, Execution-Related Advice, and Marketing of Collective Investment Scheme dated 26 May 2017, has confirmed that it will not proceed with the proposal to require the retention of pre-execution information.]*

(3) Subject to paragraph (4), the holder of a capital markets services licence to deal in ~~capital markets products securities, trade in futures contracts or carry out leveraged foreign exchange trading~~ shall —

- (a) as soon as practicable upon the receipt of a customer's order for ~~capital markets products~~ that are traded on an organised market *[This is relevant only for products that are traded on an organised market.]* —
- (i) ~~securities quoted on a securities exchange, an overseas securities exchange or a recognised trading system provider;~~
  - (ii) ~~futures contracts; or~~
  - (iii) ~~foreign exchange in connection with leveraged foreign exchange trading;~~

or the receipt of any amendment or cancellation of such an order, prepare and keep a written record of —

- (A) the particulars of the customer's instruction in the order;
- (B) the date and time of receipt of the order, amendment or cancellation;

*[S 170/2013 wef 28/03/2014]*

- (BA) where the instruction in respect of the order, amendment or cancellation is placed through an Internet-based trading platform, the Internet protocol address from which the instruction is received; and

*[S 170/2013 wef 28/03/2014]*

- (C) where the order, amendment or cancellation is transmitted to a member of an approved exchange, a recognised market operator or or overseas ~~exchange a securities exchange, a futures exchange, an overseas securities~~ exchange ~~or an~~

~~overseas futures exchange~~, or to the trading floor or electronic trading system of such exchange, recognised market operator or overseas exchange, the date and time the order, amendment or cancellation is transmitted;

~~(b) as soon as practicable upon the receipt of a customer's order for other securities, or the receipt of any amendment or cancellation of such an order, prepare and keep a written record of—~~

~~(i) the particulars of the customer's instruction in the order;~~

*[S-170/2013 wef 28/03/2014]*

~~(ii) the date of receipt of the order or of any amendment or cancellation of the order; and~~

~~(iii) where the instruction in respect of the order, amendment or cancellation is placed through an Internet based trading platform, the Internet protocol address from which the instruction is received; and~~

*[S-170/2013 wef 28/03/2014]*

(c) as soon as practicable upon the execution of a customer's order for capital markets products that are traded on an organised market ~~securities, futures contracts or foreign exchange in connection with leveraged foreign exchange trading~~, prepare and keep a written record of the particulars of the transaction and the date and time of execution of the order or amended order, if any. ~~—~~

~~(i) in the case of an order for—~~

~~(A) securities quoted on a securities exchange, an overseas securities exchange or a recognised trading system provider;~~

~~(B) futures contracts; or~~

~~(C) foreign exchange in connection with leveraged foreign exchange trading;~~

~~the date and time of execution of the order or amended order, if any; or~~

~~(ii) in the case of an order for other securities, the date of execution of the order or amended order, if any.~~

(4) Paragraph (3) shall not apply to the holder of a capital markets services licence to ~~deal in capital markets products trade in futures contracts~~ in respect of a transaction by an arbitrageur or a market-maker for the purchase or sale of futures contracts specified by an approved exchange or recognised market operator ~~a futures exchange~~ if

(a) the arbitrageur or market-maker, as the case may be, has given prior written consent for the holder not to prepare and keep the records as required in paragraph (3); and

(b) the transaction is executed on the trading floor or electronic trading system; and

(c) the transaction is entered into in accordance with the business rules or practices of the approved exchange or recognised market operator or overseas exchange ~~futures exchange~~.

(5) In this regulation —

“arbitrageur” means a person who —

- (a) is appointed, approved or registered by an approved exchange, recognised market operator or overseas exchange~~a futures exchange~~ as an arbitrageur in respect of futures contracts specified by the approved exchange, recognised market operator or overseas exchange~~futures exchange~~; and
- (b) purchases or sells any futures contract specified by the approved exchange, recognised market operator or overseas exchange~~futures exchange~~ in an organised market~~futures market~~ together with an off-setting sale or purchase of the same or equivalent contract in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the 2 markets;

“market-maker” means a person who —

- (a) is appointed, approved or registered by an approved exchange, recognised market operator or overseas exchange~~a futures exchange~~ as a market-maker in respect of futures contracts specified by the approved exchange, recognised market operator or overseas exchange~~futures exchange~~;
- (b) enters into transactions for the purchase or sale of futures contracts specified by the approved exchange, recognised market operator or overseas exchange~~futures exchange~~ for his own account;
- (c) regularly publishes *bona fide* competitive bid and offer quotations in respect of futures contracts specified by the approved exchange, recognised market operator or overseas exchange~~futures exchange~~; and
- (d) is ready, willing and able to effect transactions at his quoted prices with other persons in respect of futures contracts specified by the approved exchange, recognised market operator or overseas exchange~~futures exchange~~.

### Provision of statement of account to customers

**40.**—(1) The holder of a capital markets services licence shall on a monthly basis furnish to each customer a statement of account containing the particulars referred to in paragraph (2).

(1A) Paragraph (1) shall not apply to the holder where —

- (a) there is no change to any of those particulars since the date on which the last statement of account was made up to; or
- (b) the customer is an accredited investor, expert investor, institutional investor or a related corporation or connected person of the holder, and —
  - (i) the holder has made available to the customer, on a real-time basis, those particulars in the form of electronic records stored on an electronic facility and the customer has consented to those particulars being made available to him in this manner; or
  - (ii) the customer has requested, in writing, not to receive the statement of



account on a monthly basis from the holder.

(1B) Notwithstanding paragraph (1), when the holder of a capital markets services licence receives a request made by the holder's customer for a statement of account at any time, the holder shall provide the customer with the statement requested as soon as practicable.

(2) The statement of account referred to in paragraph (1) shall contain, where applicable, the following particulars:

- (a) the customer's transactions in securities and units in ~~a collective investment scheme~~ ~~securities transactions of the customer~~ and the price at which the transactions are entered into;
- (b) the customer's positions in derivatives contracts and spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, ~~futures positions and leveraged foreign exchange positions of the customer~~ and the prices at which the positions are acquired, and the net unrealised profits or losses in all ~~such futures positions and leveraged foreign exchange~~ positions of the customer marked to the market;
- (c) the status of every asset in the holder's custody held for the customer, including any asset deposited with a third party that is used for ~~specified products~~ ~~securities~~ lending under regulation 33 or held as collateral under regulation 34;
- (d) the movement of every asset of the customer, the date of and reasons for such movement, and the amount of the asset involved;
- (e) the movement and balance of money received on account of the customer within the meaning of regulation 15(2); and
- (f) a detailed account of all financial charges and credits to the customer's account during the monthly statement period, unless the detailed account of financial charges and credits has been included in any contract note or tax invoice issued by the holder to the customer.

(3) Subject to paragraph (4), the holder of a capital markets services licence shall furnish to each customer, at the end of every quarter of a calendar year, a statement of account containing, where applicable, the assets, positions in securities, units in a collective investment scheme, ~~derivatives contracts and spot foreign exchange contracts for the purposes of leveraged foreign exchange trading~~ ~~futures positions, leveraged foreign exchange positions~~ and cash balances (if any) of the customer as at the end of that quarter.

(4) Paragraph (3) shall not apply to the holder of a capital markets services licence where —

- (a) such particulars have been furnished to the customer by the holder in accordance with paragraph (1) for the last month of that quarter; or
- (b) the holder is exempted from complying with paragraph (1) by virtue of the application of paragraph (1A)(b).

(5) Paragraphs (1) and (3) shall not apply to the holder of a capital markets services licence ~~to deal in capital markets products~~:

- (a) which is a member of an approved clearing house, recognised clearing house or overseas clearing house ~~a clearing house~~ if the statements of account referred to in those paragraphs are furnished to the customer by the clearing house or a Depository within the meaning of section 81SF 130A of the ~~Companies Act (Cap. 50)~~; or
- (b) whose customer is an institutional investor, and with whom the holder performs periodic reconciliation in respect of the customer's transactions and positions in capital markets products.

**Documentation required by Authority, approved exchange, recognised market operator or overseas exchange or approved clearing house, recognised clearing house or overseas clearing house ~~futures exchange or clearing house~~**

41. Where the Authority, an approved exchange, recognised market operator or overseas exchange or approved clearing house, recognised clearing house or overseas clearing house ~~or a futures exchange or clearing house~~ of which the holder of a capital markets services licence is a member, requests the holder to furnish it with the documentation of any cash transaction underlying the exchange of futures contract for any cash commodity, the holder shall request for such documentation from its customer and, upon receipt thereof, provide such documentation to the Authority, an approved exchange, recognised market operator or overseas exchange or approved clearing house, recognised clearing house or overseas clearing house ~~futures exchange or clearing house~~, as the case may be. For the avoidance of doubt, the holder shall not be treated as being in breach of this regulation so long as it uses all reasonable efforts to obtain the requested documentation from its customer.

**Contract notes**

42.—(1) Subject to paragraph (1A), the holder of a capital markets services licence to deal in ~~capital markets products securities, trade in futures contracts or carry out leveraged foreign exchange trading~~ shall, in respect of a sale or purchase of any capital markets products that are securities or units in a collective investment scheme traded on an approved exchange, recognised market operator or overseas exchange, or futures contracts [*Contract notes are relevant only to these products. For derivatives contracts that are traded on SEFs and the like, the issuance of contract notes is not market practice.*] ~~securities or futures contracts or a transaction connected with leveraged foreign exchange trading~~, after entering into the transaction —

- (a) give to the other party to the transaction a contract note which contains such information as may be prescribed; or
- (b) procure that such a contract note be given in its name.

[S 709/2010 wef 26/11/2010]

(1A) Paragraph (1) shall not apply to any transaction of sale or purchase of securities, units in a collective investment scheme or exchange-traded derivatives contracts or futures contracts effected by the holder of a capital markets services licence through a member of an approved exchange, a recognised market operator or an overseas exchange —

- (a) ~~a securities exchange or overseas securities exchange; or~~
- (b) ~~a futures exchange or overseas futures exchange,~~

if the holder gives, or arranges with that member to give, to the other party to the transaction a contract note or a copy thereof issued by that member in respect of the transaction in accordance with the rules of that exchange, recognised market operator or overseas exchange or with any written law governing the issuance of contract notes by members of that exchange, recognised market operator or overseas exchange.

[S 709/2010 wef 26/11/2010]

(1B) The holder shall include, in every contract note to be given under paragraph (1), where applicable —

- (a) the name or style under which the holder carries on business in dealing in ~~capital markets products securities, trading in futures contracts or leveraged foreign exchange trading,~~ and the address of the principal place at which the holder carries on the business;
- (b) where the holder is —
- (i) dealing in capital markets products other than that are securities or units in a collective investment scheme traded on an approved exchange, recognised market operator or overseas exchange, or futures contracts ~~securities or carrying out leveraged foreign exchange trading~~ as a principal; or
  - (ii) dealing in capital markets products that are trading in securities or units in a collective investment scheme traded on an approved exchange, recognised market operator or overseas exchange, or futures contracts against its customer,

*[For securities, units in a collective investment scheme and futures contracts traded on an exchange, the holder will generally be acting as a broker and executing the order on the relevant exchange. Thus, it would be unusual for the holder to be dealing as principal (this indicates that the holder may have matched and offset the order in its own books instead of executing the order on the relevant exchange) and notification to the customer should thus be required. Dealing against the customer means taking the opposite side of the trade when executed on an exchange. Again, this is unusual so notification to the customer should be required.]*

a statement that it is so acting;

- (c) the name and address of the party to whom the contract note is given;
- (d) the date on which the transaction is entered into;
- (e) in respect of a sale or purchase of securities or units in a collective investment scheme, the number or amount, and description of the securities or units in a collective scheme that are the subject of the transaction;
- (f) in respect of a sale or purchase of futures contracts derivatives contracts ~~futures contract or a transaction connected with spot foreign exchange contracts for the purposes of leveraged foreign exchange trading,~~ the quantity and type of the futures contracts derivatives contracts ~~futures contract or the amount of spot foreign exchange~~ that is the subject of the

transaction, ~~as the case may be;~~

- (g) in respect of a sale or purchase of securities or units in a collective investment scheme, or futures contracts~~capital markets products securities or futures contract or a transaction connected with leveraged foreign exchange trading~~, the price per unit of the transaction, the amount of the consideration for the transaction, the rate and amount of commission (if any) charged for the transaction by the holder and the amount of all stamp duties or other duties or taxes payable in connection with the transaction; and
- (h) in respect of a sale or purchase of securities or units in a collective investment scheme~~capital markets products securities~~, if an amount is to be added to or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities or units in a collective investment scheme~~capital markets products securities~~, the first-mentioned amount and the nature of the benefit.

*[S 709/2010 wef 26/11/2010]*

(2) The holder of a capital markets services licence shall, no later than the business day immediately following a sale or purchase of capital markets products that are securities or units in a collective investment scheme traded on an approved exchange, recognised market operator or overseas exchange, or futures contracts~~securities or futures contract or a transaction connected with leveraged foreign exchange trading~~, give to the other party to the transaction a contract note for the transaction.

(2A) Notwithstanding paragraph (2), where any detail in a transaction that is required to be included in every contract note under paragraph (1B) becomes available or is only determined after the business day specified in paragraph (2), the holder of the capital markets services licence shall give to the other party to the transaction the contract note for the transaction no later than the business day immediately following the business day on which the information required to be included in every contract note in paragraph (1B) becomes available or has been determined.

*[S 373/2005 wef 01/07/2005]*

*[S 709/2010 wef 26/11/2010]*

(3) Any person who, without reasonable excuse, contravenes any of the provisions of this regulation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

*[S 709/2010 wef 26/11/2010]*

### **Limits for unsecured credit and credit facilities**

**43.**—(1) The holder of a capital markets services licence shall not grant, whether directly or indirectly, any unsecured advance, unsecured loan or unsecured credit facility to —

- (a) any of its directors (other than a director who is also its employee); or

(b) in relation to a director who is not an employee of the holder, any connected person of such director who is himself also not an employee of the holder.

(2) Subject to paragraph (1) and section 162 of the Companies Act (Cap. 50), the holder of a capital markets services licence shall not grant, whether directly or indirectly, any unsecured advance, unsecured loan or unsecured credit facility to any relevant person of the holder, which in the aggregate and outstanding at any one time exceeds one year's emoluments of such relevant person.

(3) For the purpose of paragraph (2), any unsecured advance, unsecured loan or unsecured credit facility granted by the holder of a capital markets services licence to any person to purchase, subscribe for or trade in any capital markets product for —

- (a) the account of a relevant person of the holder;
- (b) an account in which a relevant person of the holder has an interest;
- (c) an account of any person who acts jointly with, under the control of, or in accordance with, the direction of a relevant person of the holder; or
- (d) an account of any connected person of a relevant person of the holder, where the connected person is not himself a relevant person of the holder,

shall be deemed to be an unsecured advance, unsecured loan or unsecured credit facility granted by the holder to that relevant person.

(4) In this regulation —

“market value”, in relation to assets which are ~~specified productssecurities~~ listed for quotation or quoted on ~~an approved exchange, recognised market operator a securities exchange~~ or an overseas ~~securities~~ exchange, means —

- (a) the last transacted price of the ~~specified productssecurities~~ traded on the ~~approved~~ exchange, ~~recognised market operator or overseas exchange~~ on the preceding business day;
- (b) if there was no trading in the ~~specified productssecurities~~ on the ~~approved~~ exchange, ~~recognised market operator or overseas exchange~~ on the preceding business day, then, subject to paragraph (c), the lower of the last transacted price and the last bid price of the ~~specified productssecurities~~ on the ~~approved~~ exchange, ~~recognised market operator or overseas exchange~~; or
- (c) if there was no trading in the ~~specified productssecurities~~ on the ~~approved~~ exchange, ~~recognised market operator or overseas exchange~~ in the preceding 30 days, the value of the ~~specified productssecurities~~ as estimated by the ~~approved~~ exchange, ~~recognised market operator or overseas exchange~~ or the holder and approved by the Authority;

“relevant person”, in relation to the holder of a capital markets services licence, means —

- (a) an officer of the holder (other than a director who is not its employee); or
- (b) an employee of the holder;

“unsecured advance, unsecured loan or unsecured credit facility” includes —

- (a) any advance, loan or credit facility made by the holder of a capital markets services licence to its relevant person without security, whether it has been drawn down or not;
- (b) in respect of any advance, loan or credit facility made by the holder to its relevant person with security, any part thereof which at any time exceeds the market value of the assets constituting that security or, where the Authority is satisfied that there is no established market value for those assets, on the basis of a valuation approved by the Authority; and
- (c) any guarantee or performance bond entered into by the holder, or the provision of any security by the holder, in connection with a loan, advance or credit facility made by another party to its relevant person.

[S 373/2005 wef 01/07/2005]

### Priority of customers' orders

44.—(1) Except as permitted by paragraph (2) —

- (a) the holder of a capital markets services licence to deal in **capital market products**~~securities or trade in futures contracts~~ when acting as principal or on behalf of a person associated with or connected to the holder; or
- (b) a representative of such a holder when acting for his own account or on behalf of a person associated with or connected to the representative,

shall not enter into a transaction for the purchase or sale of **capital market products**~~securities or futures contracts~~ that are permitted to be traded on **an approved exchange or the securities market of a securities exchange, the futures market of a futures exchange or the securities market or the futures market of** a recognised market operator **or an overseas exchange**, as the case may be, if a customer of that holder or representative, who is not associated with or connected to the holder or representative, has instructed the holder or representative to purchase or sell, respectively, **capital market products** ~~securities or futures contracts~~ of the same class and the holder or representative has not complied with the instruction.

(2) Paragraph (1) shall not apply to the holder of a capital markets services licence or a representative of such a holder —

- (a) if his customer required the purchase or sale of **capital market products**~~securities or futures contracts~~ on behalf of the customer to be effected only on specified conditions and he has been unable to purchase or sell the **capital market products** ~~securities or futures contracts~~ by reason of those conditions; or
- (b) if the transaction is entered into in accordance to the business rules or practices of the **approved exchange or the recognised market operator** **or the overseas exchange**~~securities exchange or futures exchange~~, as the case may be, through which the transaction is entered into.

(3) Any person who contravenes paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 12 months or to both.

### **Specified products~~Securities~~-borrowing and lending**

45.—(1) Subject to paragraph (2), where a holder of a capital markets services licence —

- (a) borrows ~~specified productssecurities~~—from an owner of those ~~specified productssecurities~~ (referred to in this regulation as the lender), the holder shall provide Collateral to the lender for the borrowing of the ~~specified productssecurities~~; and
- (b) lends ~~specified productssecurities~~, including ~~specified productssecurities~~ belonging to its customer, to any person (referred to in this regulation as the borrower), the holder shall obtain Collateral from the borrower for the lending of the ~~specified productssecurities~~.

(2) Paragraph (1)(a) shall not apply to a holder of a capital markets services licence when the holder borrows ~~specified productssecurities~~—from an accredited investor, ~~expert investor or institutional investor~~.

(3) Subject to paragraph (2), ~~For~~ the purposes of paragraph (1)(a) and (b), the holder of a capital markets services licence shall ensure that the Collateral provided to the lender or obtained from the borrower, as the case may be, shall, throughout the period that the ~~specified productssecurities~~ are borrowed or lent, have a value not less than 100% of the market value of the ~~specified productssecurities~~ borrowed or lent.

(4) Where the holder of a capital markets services licence borrows or lends ~~specified productssecurities~~ in accordance with paragraph (1), it shall ensure that the terms and conditions of the borrowing or lending, as the case may be, are recorded in a prior written agreement, which complies with paragraph (5) and is entered into between the holder and the lender or borrower or their duly authorised agent, as the case may be.

(5) For the purposes of paragraph (4), but subject to paragraph (2), the written agreement shall —

- (a) state the capacities in which the parties are entering into the agreement (whether as principal or agent);
- (b) provide for the transfer of the title to and interest in the ~~specified productssecurities~~ lent from the lender to the holder, or the holder to the borrower, as the case may be;
- (c) provide for the transfer of the title to and interest in the whole or part of the Collateral provided or obtained by the holder which is valued to be at least 100% of the market value of the ~~specified productssecurities~~ (referred to in this regulation as minimum Collateral) which is borrowed by the holder from the lender, or lent by the holder to the borrower, as the case may be;
- (d) provide for the following rights throughout the period that the ~~specified productssecurities~~ are borrowed or lent:
  - (i) in the case where the holder borrows ~~specified productssecurities~~ from a lender, the rights of the lender in relation to the minimum Collateral and the rights of the holder in relation to the ~~specified productssecurities~~

borrowed; and

- (ii) in the case where the holder lends ~~specified productssecurities~~ to a borrower, the rights of the holder in relation to the minimum Collateral and the rights of the borrower in relation to the ~~specified productssecurities~~ borrowed, including the treatment of dividend payments, voting and other rights and arrangements for dealing with any corporate action;
- (e) provide for the procedure for calculating the lending or borrowing fees, as the case may be;
- (f) include the requirement to mark to market on every business day the ~~specified productssecurities~~ lent or borrowed, as the case may be, and all minimum Collateral comprising ~~specified productssecurities~~ and the procedures for calculating the margins;
- (g) provide for the procedures for the request for the return of the ~~specified productssecurities~~ lent, and the arrangements for dealing with the situation where such ~~specified productssecurities~~ cannot be delivered by —
  - (i) the holder, where the holder borrows ~~specified productssecurities~~ from a lender; and
  - (ii) the borrower, where the holder lends ~~specified productssecurities~~ to a borrower;
- (h) provide for the termination of the agreement by any party to the agreement, including any early termination fee which that party may be subject to;
- (i) state whether there is any right of set-off of claims;
- (j) set out the events of default and the rights and obligations of the parties to the agreement in such events of default; and
- (k) provide for the law governing the agreement and the jurisdiction to which it is subject.

(6) Where the holder of a capital markets services licence borrows ~~specified productssecurities~~ from an accredited investor, ~~expert investor or institutional investor~~, the holder shall ensure that the terms and conditions of the borrowing are recorded in a prior written agreement, which complies with paragraph (7) and is entered into between the holder and the accredited investor, ~~expert investor or institutional investor~~ or their duly authorised agent, as the case may be, regardless of whether the holder provides any assets to the accredited investor, ~~expert investor or institutional investor~~ as collateral for the borrowing.

(7) For the purposes of paragraph (6) —

- (a) the terms and conditions in the written agreement that apply to the borrowing of ~~specified productssecurities~~ shall include the details set out in paragraph (5), with the exception of paragraph (5)(f), and for this purpose —
  - (i) any reference to the minimum Collateral in paragraph (5) shall be construed as a reference to any asset which may be provided to the accredited investor, ~~expert investor or institutional investor~~ as collateral



for the borrowing; and

- (ii) any reference to the lender shall be construed as a reference to the accredited investor, ~~expert investor or institutional investor~~; and

(b) where assets are provided to the accredited investor, ~~expert investor or institutional investor~~ as collateral for the borrowing, the written agreement shall specify —

- (i) whether the ~~specified productssecurities~~—borrowed and the assets provided comprising ~~specified productssecurities~~, if any, are marked to market; and
- (ii) if so, the procedures for calculating the margins.

(8) Without prejudice to paragraph (3), the holder of a capital markets services licence may —

(a) where it borrows ~~specified productssecurities~~—from a lender, provide assets other than Collateral (referred to in this regulation as additional assets) to the lender if the Collateral already provided to the lender is valued at not less than 100% of the market value of the ~~specified productssecurities~~—borrowed as at the time the additional assets are provided to the lender; and

(b) where it lends ~~specified productssecurities~~—to a borrower, obtain additional assets from the borrower if the Collateral already obtained from the borrower is valued at not less than 100% of the market value of the ~~specified productssecurities~~—lent as at the time the additional assets are obtained from the borrower.

(9) In this regulation —

“Collateral” means —

- (a) cash;
- (b) Government securities;
- (c) marginable ~~specified productssecurities~~;
- (d) guarantees issued by banks licensed under the Banking Act (Cap. 19);
- (e) letters of credit;
- (f) any asset that —
  - (i) is liquid and readily convertible into cash;
  - (ii) is in the possession or control of —
    - (A) the holder where the holder borrows ~~specified productssecurities~~—from a lender; and
    - (B) the borrower where the holder lends ~~specified productssecurities~~—to a borrower;
  - (iii) is subject to a legally binding agreement between the lender and the holder or the holder and the borrower, as the case may be, which —
    - (A) is evidenced in writing;

(B) is irrevocable and enforceable against —

(AA) the holder where the holder borrows ~~specified products securities~~ from a lender; and

(BB) the borrower where the holder lends ~~specified products securities~~ to a borrower; and

(C) confers an unconditional right to apply the asset, to sell the asset or to otherwise convert the asset into cash on —

(AA) the lender where the holder borrows ~~specified products securities~~ from a lender; and

(BB) the holder where the holder lends ~~specified products securities~~ to a borrower;

(iv) is not a security issued by —

(A) in the case where the holder borrows ~~specified products securities~~ from a lender —

(AA) the holder, that gives rise to exposure to the holder; or

(BB) a related corporation of the holder; and

(B) in the case where the holder lends ~~specified products securities~~ to a borrower —

(AA) the borrower, that gives rise to exposure to the borrower; or

(BB) a related corporation of the borrower; and

(v) is not a security that is prohibited from serving as collateral by any approved exchange, recognised market operator or overseas exchange or approved clearing house, recognised clearing house or overseas clearing house ~~securities exchange, futures exchange or clearing house~~, as the case may be; or

(g) such other instruments as the Authority may from time to time, by a guideline issued by the Authority, determine;

“customer”, in Part V of the Act and this regulation, in relation to the holder of a capital markets services licence, does not include means —

(a) the holder in carrying out any regulated activity for its own account;

(b) an officer, an employee or a representative of the holder; or

(c) a related corporation or connected person of the holder with respect to an account belonging to and maintained wholly for the benefit of that related corporation or connected person.

~~(a) a person on whose behalf the holder of a capital markets services licence~~

~~carries on any regulated activity; or~~

~~(b) any other person with whom the holder enters or will enter into transactions as principal for the sale or purchase of specified productssecurities;~~

~~[“Customer” is already defined in the Act. Above is to modify the definition in the Act as per regulation 15.]~~

“marginable ~~specified productssecurities~~” means —

- ~~(a) specified productssecurities—~~listed for quotation or quoted on the Singapore Exchange Securities Trading Limited;
- ~~(b) in the case of an initial public offer, specified productssecurities—to~~ be listed for quotation or quoted on the Singapore Exchange Securities Trading Limited, for which the holder of a capital markets services licence has received full payment from the borrower;
- ~~(c) specified productssecurities—~~quoted on a recognised group A exchange, and issued by a corporation with shareholders’ funds of not less than \$200 million or its equivalent in a foreign currency; or
- ~~(d) such other specified productssecurities—as~~ the Authority may approve and set out in a guideline issued by the Authority;

“market value”, in relation to ~~specified productssecurities~~ listed for quotation or quoted on ~~an approved exchange, recognised market operatora securities exchange~~ or overseas ~~securities~~ exchange, ~~has the same meaning as set out in regulation 43(4), and in relation to any specified product where the Authority is satisfied that there is no established market value, on the basis of a valuation approved by the Authority; means—~~

~~(a) the last transacted price of the specified productssecurities traded on the exchange on the preceding business day;~~

~~(b) if there was no trading in the specified productssecurities on the exchange on the preceding business day, then, subject to paragraph (c), the lower of the last transacted price and the last bid price of the specified productssecurities on the exchange; or~~

~~(c) if there was no trading in the specified productssecurities on the exchange in the preceding 30 days, the value of the specified productssecurities as estimated by the exchange or the holder and approved by the Authority;~~

“recognised group A exchange” has the same meaning as in regulation 2 of the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations (Rg 13).

*[S 418/2011 wef 31/08/2011]*

## Advertisement

46. The holder of a capital markets services licence, an appointed representative, a provisional representative or a temporary representative shall not, directly or indirectly, publish, circulate or distribute any advertisement —

- (a) which refers, directly or indirectly, to any past specific recommendations of the holder in relation to ~~capital markets productssecurities or futures contracts~~ which were or would have been profitable to any person, except that the holder or representative may refer in an advertisement to a list of all recommendations made by the holder or representative within the period of not less than one year immediately before the date the advertisement is published, circulated or distributed, which list, if furnished separately from the advertisement, shall —
- (i) state the name of each ~~capital markets productsecurities or futures contract~~ recommended, the date and nature of the recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the market price of the ~~capital markets productsecurities or futures contract~~ as of the most recent practicable date; and
  - (ii) contain a statement, in as large a font as the largest font used in the body of the advertisement, to the effect that the past performance of the ~~capital markets productssecurities or futures contracts~~ in the list is not indicative of the future performance of the ~~capital markets productssecurities or futures contracts~~;
- (b) which represents, directly or indirectly, that any graph, chart, formula or other device set out or referred to in the advertisement —
- (i) can, in and of itself, be used to determine which ~~capital markets productssecurities or futures contracts~~ to buy or sell, or when to buy or sell them; or
  - (ii) will assist any person in deciding which ~~capital markets productssecurities or futures contracts~~ to buy or sell, or when to buy or sell them,
- without prominently disclosing in the advertisement the limitations thereof and the difficulties with respect to its use;
- (c) which contains any statement to the effect that any report, analysis or other service will be furnished free or without charge, unless such report, analysis or service is in fact or will in fact be furnished in its entirety and without any condition or obligation; or
- (d) which contains any inaccurate or misleading statement or presentation, or any exaggerated statement or presentation that is calculated to exploit an individual's lack of experience and knowledge.

### **Certain representations prohibited**

**46A.**—(1) Subject to paragraph (2), the holder of a capital markets services licence shall not represent or imply or knowingly permit to be represented or implied in any manner to any person that the holder's abilities or qualifications have in any respect been approved by the Authority.

(2) Paragraph (1) does not apply to a statement that a person is holding a capital markets services licence to carry on business in any regulated activity.

(3) Any person who contravenes paragraph (1) shall be guilty of an offence and shall

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

[S 709/2010 wef 26/11/2010]

## Trading standards

47.—(1) The holder of a capital markets services licence to deal in ~~capital markets productssecurities, trade in futures contract or carry out leveraged foreign exchange trading~~, or a representative of such a holder, shall not withhold or withdraw from an ~~organised market~~ ~~market~~ any order or any part of a customer's order for the benefit of itself or himself, or of any other person.

(2) The holder of a capital markets services licence to deal in ~~capital markets productssecurities, trade in futures contract or carry out leveraged foreign exchange trading~~, or the representative of such a holder, shall not divulge information relating to a customer's order or transaction held by it, unless the disclosure —

(a) is necessary for the effective execution, settlement or clearing of the order or transaction;

(b) is permitted under the rules of the relevant ~~approved exchange, recognised market operator, overseas exchange, approved clearing house, or recognised clearing house~~ or overseas clearing house ~~securities exchange, futures exchange, clearing house or recognised trading system provider~~, as the case may be; ~~or~~

(ba) is required for the holder to comply with any trade reporting obligation imposed by any written law or with the foreign reporting obligations of such jurisdiction as may be prescribed by regulations made under section 129 of the Act; or

(c) is required by the Authority under the Act or these Regulations.

## Disclosure of certain interests in respect of underwriting agreement

47A.—(1) Where —

(a) ~~specified productssecurities~~ have been offered for subscription or purchase; and

(b) the holder of a capital markets services licence has subscribed for or purchased, or is or will or may be required to subscribe for or purchase, any of those ~~specified productssecurities~~ under an underwriting or sub-underwriting agreement by reason that some or all of the ~~specified productssecurities~~ have not been subscribed for or purchased,

the holder shall not, during the period of 90 days after the close of the offer referred to in sub-paragraph (a) —

(i) make an offer to sell those ~~specified productssecurities~~ otherwise than in the ordinary course of trading on an ~~approved exchange~~ ~~securities exchange~~ or recognised market operator or overseas exchange; or

(ii) make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to those ~~specified productssecurities~~,

unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to ~~specified productssecurities~~—that the holder has acquired, or is or will or may be required to acquire, under an underwriting or sub-underwriting agreement by reason that some or all of the ~~specified productssecurities~~ have not been subscribed for or purchased.

(2) For the purpose of paragraph (1), any reference to an offer shall be construed as including a reference to a statement, however expressed, that expressly or impliedly invites a person to whom it is made to offer to acquire ~~specified productssecurities~~.

(3) Paragraph (1) shall not apply to the holder of a capital markets services licence when —

(a) making an offer to sell any ~~specified productssecurities~~, or making a recommendation with respect to those ~~specified productssecurities~~, to —

- (i) an accredited investor;
- (ii) an expert investor; or
- (iii) an institutional investor; or

(b) making an offer to sell any Government securities, or making a recommendation with respect to those Government securities, to any person.

(4) Where the holder of a capital markets services licence sends to any person a written offer, written recommendation or written statement to which paragraph (1) applies, the holder shall retain a copy of the written offer, recommendation or statement for a period of 5 years after the date the written offer, recommendation or statement is made.

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

*[S 709/2010 wef 26/11/2010]*

### **Dealing in ~~specified productssecurities~~ as principal**

**47B.**—(1) Subject to paragraph (3), the holder of a capital markets services licence to deal in ~~capital markets products securities~~ shall not, as principal, enter into any transaction of sale or purchase of any ~~specified products~~ that are listed derivatives contractssecurities—with any customer who is not the holder of a capital markets services licence to deal in ~~capital markets productssecurities~~—unless the holder first informs the customer that the holder is acting in the transaction as principal and not as agent.

(2) The holder of a capital markets services licence to deal in ~~capital markets productssecurities~~—which enters into a transaction of sale or purchase of ~~specified productssecurities~~, as principal, with a customer who is not the holder of a capital markets services licence to deal in ~~capital markets productssecurities~~—shall state in the contract note (where regulation 42 applies) that the holder is acting in the transaction as principal and not as agent.

(3) Paragraph (1) shall not apply to a transaction of sale or purchase of an odd lot of ~~specified products~~ that are securities or units in a collective investment scheme~~securities~~—that is entered into by the holder of a capital markets services

licence to deal in ~~capital markets products~~~~securities~~—which is a member of an ~~approved exchange~~ ~~a securities exchange~~ or recognised market operator or overseas exchange and specialises in transactions relating to odd lots of ~~specified products~~~~securities~~.

(4) Paragraphs (1) and (2) shall not apply to a market-maker when dealing in ~~specified products~~~~securities~~ in such capacity.

(5) Where the holder of a capital markets services licence to deal in ~~capital markets products~~~~securities~~ fails to comply with paragraph (1) or (2) in respect of a contract for the sale of ~~specified products~~~~securities~~ by the holder, the purchaser of ~~that capital markets products~~~~the securities~~ may, if he has not disposed of them, rescind the contract by a notice of rescission given in writing to the holder not later than 30 days after the receipt of the contract note.

(6) Where the holder of a capital markets services licence to deal in ~~capital markets products~~~~securities~~ fails to comply with paragraph (1) or (2) in respect of a contract for the purchase of ~~specified products~~~~securities~~ by the holder, the vendor of ~~that~~~~the specified products~~~~securities~~ may, in like manner, rescind the contract.

(7) Nothing in paragraph (5) or (6) shall affect any right that a person has apart from those paragraphs.

(8) Any person who contravenes any of the provisions of this regulation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 12 months or to both.

(9) For the purposes of this regulation —

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

- (i) a person associated with or connected to the holder;
- (ii) a corporation in which the holder has a controlling interest; or
- (iii) a corporation in which the holder's interest and the interests of the directors of the holder together constitute a controlling interest;

(b) a reference to ~~specified products~~~~securities~~ is a reference to ~~specified products securities~~ permitted to be traded on ~~the securities market of~~—

- (A) ~~an approved exchange~~ ~~a securities exchange~~;
- (B) ~~an overseas exchange~~ ~~an overseas securities exchange~~; or
- (C) a recognised market operator;

(c) a reference to a market-maker is a reference to —

- (i) the holder of a capital markets services licence which —
  - (A) deals in ~~capital markets products~~ that are ~~specified products~~~~securities~~ for its own account;

- (B) regularly publishes *bona fide* ~~competitive~~ bids and offers quotations in respect of those ~~specified products~~ securities;
  - (C) is ready, willing and able to enter into transactions at such quoted prices with other persons in respect of those ~~specified products~~ securities; and
  - (D) is recognised as a market-maker by ~~an approved exchange, a recognised market operator or an overseas exchange~~ securities exchange, ~~overseas securities exchange~~ or the Authority; or
- (ii) a designated market-maker referred to in paragraph 2(1)(i) of the Second Schedule.

[S 709/2010 wef 26/11/2010]

### Dealing with certain customers as principal

**47BA** – (1) The holder of a capital markets services licence, when dealing in capital markets products that are –

- (a) over-the-counter derivatives contracts; or
- (b) spot foreign exchange contracts for the purposes of leveraged foreign exchange trading,

with a customer who is not an accredited investor, an expert investor or an institutional investor, shall do so as principal ~~capacity~~ and not as agent.

*[We note that MAS, in its Consultation Paper on the Review of the Regulatory Framework for Unlisted Margin Derivatives Offered to Retail Investors dated 28 May 2012, had noted in relation to white-labelled Internet-based offerings of unlisted margin derivatives, the potential for confusion by retail customers as to who they had recourse to. While we do not see any issues with complying with the above, we are not certain that it really addresses the concern raised in the Consultation Paper.]*

### Trading against customer

**47C.**—(1) The holder of a capital markets services licence to deal in capital markets products ~~trade in futures contracts~~ shall not knowingly enter into a transaction ~~in futures contracts~~ to buy from or sell to its customer any ~~securities or units in a collective investment scheme traded on an approved exchange, recognised market operator or overseas exchange or~~ futures contract for —

- (a) the holder's own account;
- (b) an account of a person associated with or connected to it; or
- (c) an account in which the holder has an interest,

except with the customer's prior consent and in accordance with the business rules and practices of ~~an approved exchange, a futures exchange or~~ recognised market operator ~~or overseas exchange~~.



(2) Any person who contravenes paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 12 months or to both.

[S 709/2010 wef 26/11/2010]

### Cross-trading

**47D.**—(1) The holder of a capital markets services licence to deal in capital markets products ~~trade in futures contracts~~ shall not knowingly fill or execute a customer's order for the purchase or sale of securities or units in a collective investment scheme traded on an approved exchange, recognised market operator or overseas exchange or a futures contract ~~on an organised market a futures market~~ by off-setting against the order or orders of any other person, without effecting such a purchase or sale either —

- (a) on the trading floor or electronic ~~futures~~ trading system; or
- (b) in accordance with the business rules and practices of an approved exchange, a futures exchange or recognised market operator or overseas exchange.

(2) Any person who contravenes paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 12 months or to both.

[S 709/2010 wef 26/11/2010]

### General risk disclosure requirements

**47DA.**—(1) The holder of a capital markets services licence to deal in capital markets products shall not open a trading account for a customer for the purpose of trading in any capital markets products unless it —

- (a) informs the customer whether the holder is acting in the transaction as principal or agent;
- (b) furnishes the customer with a written risk disclosure document that discloses the material risks of the capital markets products; and
- (c) receives from the customer an acknowledgement signed and dated by the customer that he has received and understood the nature and contents of the risk disclosure document provided.

(2) Paragraph (1) does not apply to the holder —

- (a) in respect of its customer who is an accredited investor, an expert investor or an institutional investor, or a related corporation or a connected person of the holder;
- (b) where it has made available to the customer the risk disclosure prepared by the issuer, if applicable, of the capital markets products; or
- (c) in respect of futures contracts, spot foreign exchange contracts for the purposes of leveraged foreign exchange trading or over-the-counter derivatives contracts of which the underlying thing or any of the underlying things is a currency or currency index, where the holder has furnished the customer with a risk disclosure document in accordance with ~~Regulation~~ 47E.

## Risk disclosure by certain persons

**47E.**—(1) The holder of a capital markets services licence to deal in capital markets products ~~trade in futures contracts or carry out leveraged foreign exchange trading~~ shall not open a ~~futures trading account or leveraged foreign exchange trading account~~ for the purpose of trading in —

- (a) futures contracts;
- (b) spot foreign exchange contracts for the purposes of leveraged foreign exchange trading; or
- (c) over-the-counter derivatives contracts of which the underlying thing or any of the underlying things is a currency or currency index;

for a customer unless it —

- (i) furnishes the customer with a separate written risk disclosure document in Form 13; and
- (ii) receives from the customer an acknowledgment signed and dated by the customer that he has received and understood the nature and contents of the risk disclosure document in Form 13.

(2) The holder of a capital markets services licence for fund management shall not solicit or enter into an agreement with a prospective customer for the purpose of —

- (a) managing the customer's trading account for the purpose of trading in futures contracts ~~trading account~~ or foreign exchange contracts ~~trading account~~; or
- (b) guiding the customer's trading account for the purpose of trading in futures contracts ~~trading account~~ or foreign exchange ~~contract~~~~trading account~~,

by means of a systematic programme that recommends specific transactions unless, at or before the time the holder engages in the solicitation or enters into the agreement (whichever is the earlier), the holder —

- (i) delivers or causes to be delivered to the prospective customer a risk disclosure document in Form 14; and
- (ii) receives from the prospective customer an acknowledgment signed and dated by him that he has received and understood the nature and contents of the risk disclosure document in Form 14.

(2A) Paragraphs (1) and (2) shall not apply to the holder in respect of its customer who is an accredited investor, expert investor, or institutional investor, or a related corporation or a connected person of the holder.

(3) Paragraph (2) shall not apply to collective investment schemes that are approved under Division 2 of Part XIII of the Act.

(4) The holder of a capital markets services licence shall ensure that copies of Forms 13 and 14 delivered to its prospective customer are kept in Singapore.

(5) Any person who contravenes any of the provisions of this regulation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 12 months or to both.

## PART V

## DEALING IN GOVERNMENT SECURITIES

**Compliance with Rules and Market Practices**

**48.**—(1) The following persons shall comply with the Rules and Market Practices when dealing in Government securities:

- (a) the holder of a capital markets services licence to deal in **capital markets productssecurities**;
- (b) a person exempted from holding a capital markets services licence under section 99 (1)(a), (b), (c) or (d) of the Act;
- (c) a person exempted from holding a capital markets services licence to deal in **capital markets productssecurities**—under **sub**-paragraph (2)(1)(e) of the Second Schedule.

(2) Where any provision of these Regulations conflicts with any provision set out in the Rules and Market Practices, the former shall prevail.

## PART VI

## MISCELLANEOUS

**49.** [Deleted by S 709/2010 wef 26/11/2010]

**50.** [Deleted by S 709/2010 wef 26/11/2010]

**50A.** [Deleted by S 709/2010 wef 26/11/2010]

**Position limit**

**51.** The Authority may issue a direction to a person, or its agent, who holds or controls net long or net short positions in any futures contract in excess of the position limit set **under section 29 or 41 of the Act**~~by an approved exchange under section 16A of the Act~~, to trade under conditions and restrictions specified in that direction in order to ensure compliance with the position limit; and may, in particular, require the person or agent to do one or more of the following:

- (a) cease any further increase in his positions;
- (b) liquidate his position in order to comply with the position limit within the time specified in the direction;
- (c) be subject to higher margin requirements in respect of his positions.

### Non-applicability of section 339 (2) of Act under certain circumstances

**52.**—(1) Subsection (2) of section 339 of the Act shall not apply to the carrying on of a business in any regulated activity outside Singapore, insofar as that subsection makes that act an offence under Part IV of the Act, if —

- (a) information about the business is not communicated to or directed at any person or persons in Singapore, whether electronically or otherwise;
- (b) a prominent disclaimer comprising a statement referred to in paragraph (2) is contained in all advertisements and published information about the business;
- (c) no advertisement or published information about the business contains any information which is specifically relevant to a person or persons in Singapore; and
- (d) no advertisement or published information about the business is referred to in, or directly accessible from, any source which is intended for a person or persons in Singapore.

(1A) Subsection (2) of section 339 of the Act shall not apply to the carrying on of a business in providing credit rating services outside Singapore, insofar as that subsection makes that act an offence under Part IV of the Act, if the credit ratings prepared in the course of the business are prepared wholly outside Singapore.

(2) For the purposes of paragraph (1)(b), the disclaimer shall comprise a statement to the effect that the advertisement or published information to which it relates —

- (a) is made to or directed at persons outside Singapore; or
- (b) may be acted upon only by persons outside Singapore.

### Exemption for SGXLink Pte Ltd

**53.** [*Deleted by S 709/2010 wef 26/11/2010*]

### Banks, merchant banks and finance companies

**54.**—(1) Subject to paragraphs (1A) and (1B), sections 104, 104A and 105 of the Act, Part III of these Regulations and regulations 13(b)(ix), 13D, 39(1)(e), (1)(k), 2(ba), 2(c) (3), (4) and (5), 40, 42, 44, 45, 46, 47 and 47B to 47E shall, with the necessary modifications, apply to each of the following exempt persons in respect of its business in any regulated activity as those provisions apply to the holder of a capital markets services licence and, where applicable, shall, with the necessary modifications, apply to a representative of any of these exempt persons when acting as such as those provisions apply to the representative of the holder of a capital markets services licence:

- (a) a bank licensed under the Banking Act (Cap. 19);

(b) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186); ~~and~~

(c) a finance company licensed under the Finance Companies Act (Cap. 108).

(1A) Divisions 2 and 4 of Part III does not apply to any of the following exempt persons if the customer of the exempt person deposits the money in an account established with the exempt person and maintained in the customer's own name:

(a) a bank licensed under the Banking Act (Cap. 19);

~~(a)(b)~~ a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);

(c) a finance company licensed under the Finance Companies Act (Cap. 108).

~~(1B) Regulation 42 does not apply to any transaction in uncleared derivatives contracts entered by the following exempt persons with a customer which is an accredited investor, expert investor or institutional investor:~~

~~(a) a bank licensed under the Banking Act (Cap. 19);~~

~~(b) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);~~

~~(c) a finance company licensed under the Finance Companies Act (Cap. 108).~~

*[We have deleted this on the basis that our amendments to regulation 42 will be accepted.]*

(2) *[Deleted by S 709/2010 wef 26/11/2010]*

(3) Where any regulation referred to in paragraph (1) or part of it conflicts with any requirement under the Banking Act (Cap. 19), the Monetary Authority of Singapore Act (Cap. 186) or the Finance Companies Act (Cap. 108), the latter shall prevail.

### Registered Fund Management Companies

**54A.**—(1) Sections 102(1) to (4), 104(1), 104A, 106, 107(1), (2) and (5) and 112(1) of the Act and Divisions 1, 2 and 3 of Part III (other than regulations 19, 30 and 31) of these Regulations and regulations 13, 13B, 39, 40, 43, 46 and 46A shall, with the necessary modifications, apply to each Registered Fund Management Company in respect of its business in fund management as those provisions apply to the holder of a capital markets services licence and, where applicable, shall, with the necessary modifications, apply to a representative of a Registered Fund Management Company when acting as such, as those provisions apply to the representative of the holder of a capital markets services licence.

(2) As a condition under section 99(4) of the Act, a Registered Fund Management Company must remove its chief executive officer or any of its directors if the Authority is of the opinion that the chief executive officer or the director has failed to ensure compliance by the Company with any of its duties under regulations 13 and 13B, as applied to the Company under paragraph (1).

## Offences

55. Any person who contravenes regulation ~~3D~~, 4(1), (2) or (3), 5(1), (2), (3), (4), (5), (6) or (7), 7(2A), 11(2), ~~(3) or (4)~~, 11A(2) or (3), 13, 13B, ~~13D~~, 14(4), 16(1), ~~or (2), (4) or (5)~~, 17(1), (2) or (4), 17A(1), 18, 20(2), 20A, 21, 22(2), 26(1) or (2), 27(1), (3) or (4), 28, 29(1), 31, 32, 33(2), (4) or (5), 34, 34(A), 35, 37(1), (1A), (1B), ~~(1C)~~, (2) or (3), 38(1), 39(1), (2) or (3), 40(1), (2) or (3), 41, 43(1) or (2), 45(1), (3), (4), (5), (6) or (7), 46, 47, 47BA, 47DA or 48(1), paragraphs 2(2), 3(8), (9), (12), or (14)(b), 3A(10), (11), (14) or (16)(b), 5(7A), (7G), (7I) or (7J) or 7(6) of the Second Schedule, or a direction issued by the Authority under regulation 51 or paragraphs 3(13), 3A(15) or 5(7H) of the Second Schedule, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

## PART VII

### TRANSITIONAL PROVISIONS

#### ~~Persons exempted from holding capital markets services licence under paragraph 5(1)(d) of Second Schedule in force before 7<sup>th</sup> August 2012~~

~~56. Any person who, immediately before 7<sup>th</sup> August 2012, was exempted from the requirement to hold a capital markets services licence to carry on business in fund management under paragraph 5(1)(d) of the Second Schedule in force immediately before that date, shall continue to be exempted from the requirement to hold a capital markets services licence to carry on business in fund management —~~

~~(a) until the expiry of a period of 6 months after that date;~~

~~(b) if, before the expiry of the period of 6 months in paragraph (a), it applies for a capital markets services licence for fund management, until the date on which the licence is granted to it, the date it is notified by the Authority that its application has been refused, or the date the application is withdrawn; or~~

~~(c) if, before the expiry of the period of 6 months in paragraph (a), it lodges with the Authority a notice of commencement of business as a Registered Fund Management Company pursuant to paragraph 5(7) of the Second Schedule, until the date the Authority publishes its registration as a Registered Fund Management Company on the Authority's Internet website at <http://www.mas.gov.sg>, or the date it is notified by the Authority that the Authority has refused to register it as a Registered Fund Management Company.~~

~~[No longer relevant.]~~

57. [Deleted by S 385/2012 wef 07/08/2012]

58. [*Deleted by S 385/2012 wef 07/08/2012*]

59. [*Deleted by S 385/2012 wef 07/08/2012*]

60. [*Deleted by S 385/2012 wef 07/08/2012*]

**~~Persons carrying on business in providing credit rating services before 17<sup>th</sup> January 2012~~**

~~61. Any person who, immediately before 17th January 2012, was carrying on business in providing credit rating services shall not be required to hold a capital markets services licence to carry on business in providing credit rating services —~~

~~(a) for a period of 6 months from 17th January 2012; or~~

~~(b) if, before the expiry of the period of 6 months referred to in paragraph (a), he applies for a capital markets services licence to carry on business in providing credit rating services or to carry on business in regulated activities which include providing credit rating services, until the date on which the licence is granted to him, or on which his application is refused or withdrawn,~~

~~whichever is the later.~~

*[No longer relevant.]*

FIRST SCHEDULE

*[Deleted by S 373/2005 wef 01/07/2005]*



## SECOND SCHEDULE

Regulation 14

## EXEMPTIONS FROM SECTIONS 82(1) AND 99B(1) OF ACT

**Definitions**

## 1. In this Schedule –

“agent”, in relation to a member of Lloyd’s, “Lloyd’s”, “member of Lloyd’s” and “Service Company” have the same meanings as in regulation 2 of the Insurance (Lloyd’s Asia Scheme) Regulations (Rg 9);

“base capital”, in relation to a corporation, means the sum of —

(a) the following items in the latest accounts of the corporation:

- (i) paid-up ordinary share capital; and
- (ii) paid-up irredeemable and non-cumulative preference share capital; and

*[S 170/2013 wef 28/03/2013]*

(b) any unappropriated profit or loss in the latest audited accounts of the corporation,

less any interim loss in the latest accounts of the corporation and any dividend that has been declared since the date of the latest audited accounts of the corporation;

*[S 385/2012 wef 07/08/2012]*

“block futures contract” means a bilaterally-negotiated futures contract which meets the minimum trade size determined, and to be reported to the approved exchange, recognised market operator or overseas exchange, in accordance with the business rules of that approved exchange, recognised market operator or overseas exchange, as the case may be;

~~“connected person”, in relation to any individual, means —~~

- ~~(a) his spouse, son, adopted son, step son, daughter, adopted daughter, step daughter, father, step father, mother, step mother, brother, step brother, sister or step sister; or~~
- ~~(b) a firm or corporation in which he or any of the persons referred to in paragraph (a) has control of not less than 50% of the voting power, whether such control is exercised individually or jointly;~~

*[“Connected person” is defined in the Act, albeit somewhat differently from the above. Unless there is a specific reason for not doing so, it would be better if the same term could be defined in the same way.]*

“designated market-maker” means a corporation who —

- (a) carries on business to deal in designated ~~products~~securities—as a market-maker; and
- (b) is approved as a designated market-maker by the Singapore Exchange Securities Trading Limited, in accordance with its business rules;

“designated ~~products~~securities” means —

- (a) exchange traded fund interests; or
- (b) structured warrants,

which have received approval in-principle for listing and quotation on, or are listed for quotation on, the Singapore Exchange Securities Trading Limited;

“exchange traded fund interest” means any unit in a collective investment scheme concerned with the acquisition, holding, management or disposal of a portfolio of predetermined constituent assets in predetermined proportions, ~~which constituent assets principally comprise securities listed for quotation on any securities exchange or overseas securities exchange~~; being a unit that is —

- (a) listed for quotation, or has received approval in-principle for listing and quotation, on any approved exchange, recognised market operator or overseas exchange~~securities exchange~~; and
- (b) created and redeemed as part of a block of units in the collective investment scheme in exchange for the constituent assets in the portfolio;

“excluded OTC commodity derivatives contracts” means an over-the-counter derivatives contract:

- (a) in which the underlying thing or underlying things consists solely of one or more commodities;
- (b) which is entered into for the purpose of fulfilling the needs of the day-to-day operations of the business of one or more of the parties to the contract; and
- (c) where the obligations under such contract are, or are intended, to be discharged by one party to the other at some future time other than by cash settlement only. For the avoidance of doubt, this condition is treated as satisfied notwithstanding the inclusion in such contract of an option to cash-settle all or part of such contract in specific agreed circumstances.

*[MAS in its Response on the Consultation Paper on the Transfer of Regulatory Oversight of Commodity Derivatives from IE Singapore to MAS dated 11 February 2015 has stated that it will exclude physically settled commodity forward contracts (including certain contracts with some form of optionality or embedded derivative). The above language is modelled on the language in MAS’s Margin Guidelines.]*

“Finance and Treasury Centre” means an approved Finance and Treasury Centre under section 43G of the Income Tax Act (Cap. 134);

“headquarters company” means an approved headquarters company under section 43E of the Income Tax Act;

~~“investment company” has the same meaning as in section 355(1) of the Companies Act (Cap. 50);~~

“investment contract” means any contract, scheme or arrangement which in substance and irrespective of the form thereof involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property which under or in accordance with the terms of investment will, or may at the option of the investor, be used or employed in common with any other interest in or right in respect of property acquired in or under like circumstances;

“irredeemable and non-cumulative preference share capital” means preference share capital consisting of preference shares that satisfy all of the following requirements:

- (a) the principal of the shares is perpetual;
- (b) the shares are not callable at the initiative of the issuer of the shares or the shareholders, and the principal of the shares is never repaid outside of liquidation of the issuer, except in the case of a repurchase or other manner of reduction of share capital that is initiated by the issuer and permitted under written law; and
- (c) the issuer has full discretion to cancel dividend payments, and —
  - (i) the cancellation of dividend payments is not an event of default of the issuer under any agreement;
  - (ii) the issuer has full access to cancelled dividend payments to meet its obligations as they fall due; and
  - (iii) the cancellation of dividend payments does not result in any restriction being imposed on the issuer under any agreement, except in relation to dividend payments to ordinary shareholders;

*[S 170/2013 wef 28/03/2013]*

“market-maker” means a corporation which —

- (a) through a facility, at a place or otherwise, regularly publishes bona fide bid and offer quotes the prices at which it proposes to acquire or dispose of designated ~~products securities~~ for its own account; and
- (b) is ready, willing and able to effect transactions in the designated ~~products securities~~ at the quoted prices;

“net head office funds”, in relation to a foreign company, means the net liability of the Singapore branch of that foreign company to its head office and any other branches outside of Singapore;

“order-filler” means an individual who is registered as such with an approved exchange, recognised market operator or overseas exchange ~~a futures exchange~~ for the sole purpose of entering into contracts on the floor of that approved exchange, recognised market operator or overseas exchange ~~futures exchange~~ on behalf of members of that approved exchange, recognised market operator or overseas exchange ~~futures exchange~~;

“provider”, in relation to a collective investment scheme, includes –

- (a) the manager of the scheme;
- (b) the trustee of the scheme; and
- (c) any person which is authorised by the manager or the trustee of the scheme to receive a customer’s money or property on its behalf.

“qualified arrangement” means any of the arrangements referred to in paragraphs (i) to (xii) of the definition of “collective investment scheme” in section 2(1) of the Act;

“qualified investor” has the meaning set out in paragraph 5(3) of this Schedule;

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

“relevant offence” means —

- (a) an offence, whether under the law of Singapore or elsewhere, in connection with the promotion, formation or management of a corporation, or involving fraud or dishonesty, or the conviction for which involved a finding that the offender had acted fraudulently or dishonestly;
- (b) an offence under the Companies Act (Cap. 50) involving lack of diligence in the discharge of the duties of a director of a company;
- (c) an offence under the Act or any regulations made under the Act; or
- (d) an offence under the Banking Act (Cap. 19), the Commodity Trading Act (Cap. 48A), the Finance Companies Act (Cap. 108), the Insurance Act (Cap. 142), the Monetary Authority of Singapore Act (Cap. 186), the Money-changing and Remittance Businesses Act (Cap. 187), the Penal Code (Cap. 224), the Financial Advisers Act (Cap. 110), or any subsidiary legislation made under any of these Acts;

“specified exchange-traded derivatives contracts” means an exchange-traded derivatives contract that is not a futures contract;

“specified products ~~securities~~ borrowing and lending facility” means the facility established and operated by the Central Depository (Pte) Ltd for the lending and

borrowing of **specified products securities**;

“special purpose corporation” means a corporation established to acquire and own an aircraft which is to be leased out;

“structured warrant” means an instrument issued by a financial institution, on a **commodity or the credit of any person** or an underlying financial instrument not issued by that financial institution, which gives the holder the right —

(a) to purchase from, or sell to, the financial institution that **commodity or underlying financial instrument** in accordance with the terms of issue of the instrument; or

(b) to receive from the financial institution a cash payment calculated by reference to the fluctuations in the value or price of that **commodity or the credit of that person** or underlying financial instrument and in accordance with the terms of issue of the instrument;

“underlying financial instrument” includes any **financial instrument and units in a collective investment scheme. share, basket of shares and share index.**

### *Dealing in Securities*

#### **Exemption from requirement to hold capital markets services licence to deal in capital markets products that are securities, units in a collective investment scheme and specified exchange-traded derivatives contracts securities**

2. —(1) The following persons ~~are shall be~~ exempted from the requirement to hold a capital markets services licence to carry on business in dealing in **capital markets products that are securities, units in a collective investment scheme or specified exchange-traded derivatives contracts securities**, **or in the case of an individual, from section 99B(1) of the Act**, subject to the conditions and restrictions specified:

(a) a person when carrying on business in dealing in **capital markets products that are securities, units in a collective investment scheme or specified exchange-traded derivatives contracts securities** for his own account **(which includes for the avoidance of doubt, the account of any branch of such person)**, or an account belonging to and maintained wholly for the benefit of a related corporation **or connected person**, and with or through —

(i) the holder of a capital markets services licence to deal in **capital markets products that are securities, units in a collective investment scheme or specified exchange-traded derivatives contracts** **or any combination of the foregoing securities**;

(ii) a bank licensed under the Banking Act **(Cap. 19)**;

(iii) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act **(Cap. 186)**;

(iv) a bank licensed, registered, approved or otherwise regulated under the laws of a jurisdiction outside Singapore to conduct banking business, ~~but only in relation to securities, units in a collective investment scheme, or specified exchange-traded derivatives contracts, that are not~~

~~quoted on an approved exchange a securities exchange;~~

- (v) a corporation or firm licensed or registered to carry on business in dealing in capital markets products that are securities, units in a collective investment scheme, or specified exchange-traded derivatives contracts, or any combination of the foregoing, as the case may be, ~~securities under the laws of a jurisdiction outside Singapore, but only in relation to securities, units in a collective investment scheme, or specified exchange-traded derivatives contracts, that are not quoted on an approved exchange a securities exchange;~~ or
  - (vi) the Central Depository (Pte) Ltd pursuant to its ~~specified products securities~~ borrowing and lending facility;
- (b) a person whose dealing in capital markets products that are securities, units in a collective investment scheme or specified exchange-traded derivatives contracts ~~securities~~ is solely incidental to his carrying on business in —
- (i) fund management;
  - (ii) providing custodial services ~~for securities~~; or
  - (iii) ~~product securities~~ financing;
- ~~(c) an investment company when dealing in securities solely in connection with its acting as an underwriter or sub-underwriter of the issue of those securities for its own account;~~
- (d) the Central Depository (Pte) Ltd in respect of its dealing in capital markets products that are securities, units in a collective investment scheme or specified exchange-traded derivatives contracts ~~securities~~ —
- (i) that is solely incidental to its business of providing depository services for ~~securities, units in a collective investment scheme or specified exchange-traded derivatives contracts securities~~; or
  - (ii) that is done by reason only of its entering into a transaction pursuant to its ~~specified products securities~~ borrowing and lending facility, and in compliance with conditions specified in writing by the Authority;
- (e) a person when carrying on business in dealing in bonds with —
- (i) an accredited investor, ~~institutional investor or expert investor~~; ~~or~~
  - (ii) a person whose business involves the acquisition and disposal of or holding of ~~specified products securities~~ (whether as principal or agent);
- (f) a corporation when subscribing for securities, units in a collective investment scheme, or specified exchange-traded derivatives contracts on behalf of a customer as nominee, provided that such corporation —
- (i) has no interest in the securities, units in a collective investment scheme or specified exchange-traded derivatives contracts, as the case may be, subscribed for other than as a bare trustee; and
  - (ii) is a wholly-owned subsidiary of —
    - (A) the holder of a capital markets services licence to deal in

capital markets products that are securities, units in a collective investment scheme or specified exchange-traded derivatives contracts, or any combination of the foregoing securities;

- (B) a bank licensed under the Banking Act (Cap. 19);
- (C) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);
- (D) a finance company licensed under the Finance Companies Act (Cap. 108);
- (E) an approved exchange or a recognised market operator ~~securities exchange~~;
- (F) an approved holding company ~~an exchange holding company~~;  
or
- (G) an approved clearing house or a recognised clearing house ~~clearing house~~;

(g) a person approved by the Authority when, pursuant to the establishment and promotion of an aircraft leasing business in Singapore, he deals in the shares of a special purpose corporation with —

- (i) a bank licensed under the Banking Act (Cap. 19), a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186), or such other financial institution as may be approved by the Authority; or
- (ii) a corporation with total net assets exceeding \$10 million in value or its equivalent in value in a foreign currency as determined in accordance with the most recent audited balance-sheet of the corporation or, in the case of a corporation which is not required to prepare audited accounts, a balance-sheet certified by the corporation as giving a true and fair view of the state of affairs of the corporation as at the end of the period to which it relates,

(referred to in this sub-paragraph as a designated institution) if, and only if, such dealing in shares is subject to a prohibition that the designated institution may not subsequently dispose of the shares of the special purpose corporation except to another designated institution;

- (h) a trustee of a qualified arrangement in respect of securities, ~~units in a collective investment scheme, or specified exchange-traded derivative contracts whose dealing in capital markets products that are securities, units in a collective investment scheme, or specified exchange-traded derivatives contracts whose dealing in securities~~ is solely incidental to the management and administration of such arrangement;
- (i) a designated market-maker when carrying on business in dealing in ~~capital markets products that are designated products~~ ~~designated securities~~ for its own account (which includes for the avoidance of doubt, the account of any branch of such designated market-maker) or for the account of any of its related corporations or connected persons;

(j) a financial adviser licensed under the Financial Advisers Act (Cap. 110), or a person exempted under section 23 or 100 of that Act, **and its representatives in respect of providing the financial advisory service of advising others, either directly or through publications or writings, and whether in electronic, print or other form, concerning any units in a collective investment scheme, and whose business of dealing in capital markets products that are units in a collective investment scheme is solely incidental to its provision of that financial advisory service in respect of units in a collective investment scheme**~~the marketing of any collective investment scheme, when marketing, or redeeming units of, any collective investment scheme;~~

(k) any responsible person for a collective investment scheme —

- (i) that is authorised under section 286 of the Act;
- (ii) that is recognised under section 287 of the Act; or
- (iii) where the units of the scheme have been, **are** ~~is~~ or will be, offered in reliance on an exemption under Subdivision (4) of Division 2 of Part XIII of the Act,

in respect of his dealing in **capital markets products**~~securities~~ being —

(A) units of that scheme or the underlying **capital markets products securities**~~securities~~ that comprise the investment of funds under that scheme, provided that such responsible person is also the holder of a capital markets services licence, or an exempt person, in respect of fund management; or

(B) units of that scheme, provided that the dealing is effected through any of the following persons:

(BA) the holder of a capital markets services licence to deal in **capital markets products that are securities, units in a collective investment scheme or specified exchange-traded derivatives contracts, or any combination of the foregoing securities**;

(BB) an exempt person in respect of dealing in **securities**~~being~~**capital markets products that are units of any collective investment scheme**;

(BC) a financial adviser licensed under the Financial Advisers Act (Cap. 110) **referred to in subparagraph 1(j)**~~to market collective investment schemes~~; or

(BD) an exempt financial adviser as defined in the Financial Advisers Act **referred to in subparagraph 1(j)**~~in respect of marketing of collective investment schemes~~.



- (l) a person when carrying on business in dealing capital markets products that are units in a collective investment scheme for a customer who is —
- (i) an accredited investor, expert investor or institutional investor;
  - (ii) any of its related corporations<sup>s</sup>; or
  - (iii) any of its connected persons<sup>s</sup>.
- (m) a corporation carrying on business in fund management, provided that such corporation is also the holder of a capital markets services licence, or an exempt person, in respect of fund management, in respect of dealing in units of a collective investment scheme, in relation to collective investment schemes that are managed by the corporation or any of its related corporations or connected persons;
- (n) a person who carries on business in dealing in capital markets products that are units in a collective investment scheme that does not invest in which property does not comprise of any capital markets products, and of which all of the participants are qualified investors.
- (2) For the purpose of sub-paragraph (1)(j) —
- (a) regulations 39(3), 44, 46, 46A, 47 and 47B of these Regulations, with the necessary modifications, shall apply to a person exempted under sub-paragraph (1)(j) in respect of its business of dealing in capital markets products that are units in a collective investment scheme;
  - (b) where the person exempted under sub-paragraph (1)(j) is a licensed financial adviser or any of its representatives, in connection with its dealing in capital markets products that are units in a collective investment scheme, receives client's money or property<sup>s</sup> —
    - (i) such money or property shall be handed over to—
      - (A) the provider of the collective investment scheme;
      - (B) a holder of a capital markets services licence to provide custodial services, which is authorised by the client to receive the client's money or property; or
      - (C) a person exempt under paragraph regulation 6 of this Schedule from holding a capital markets services licence for providing custodial services which is authorised by the client to receive the client's money or property,
 no later than the business day immediately following the day on which the licensed financial adviser or its representative receives the money or property (referred to in this paragraph as the specified date);
    - (ii) the licensed financial adviser or any of its representatives may hand over its or his client's money or property to a person referred to in sub-paragraph (2)(b)(i)(A), (B) or (C) after the specified date if, but only if, he has the client's prior written consent to do so;

- (iii) a licensed financial adviser or any of its representative shall not, in its dealing in capital markets products that are units in a collective investment scheme, receive client's money or property in the form of cash or any cheque made payable to any person (other than a person referred to in sub-paragraph (2)(b)(i)(A), (B) or (C)), except where the cash or cheque is wholly for services rendered by the licensed financial adviser or representative; and
- (c) where the person exempted under sub-paragraph (1)(j) passes on to another holder of a capital markets service licence, or a person exempted under section 99(1)(a) or (b) of the Act in respect of the regulated activity of dealing in capital markets products, a customer's order to purchase or sell units in a collective investment scheme which are listed for quotation on an approved exchange, recognised market operator or overseas exchange, the person shall —
- (i) provide a written disclosure to the customer in respect of the potential risks associated with the purchase or sale of the units in the collective investment scheme on the approved exchange, recognised market operator or overseas exchange, including the risk of delay in the execution of the order, and obtain the customer's written acknowledgement of the disclosure; and
  - (ii) maintain a record of all written acknowledgements received from its customers in the English language.

(3) An individual shall not be or shall cease to be so exempted from section 99B(1) of the Act if —

(a) he is or becomes a representative or employee of the holder of a capital markets services licence to deal in capital markets products that are securities, units in a collective investment scheme or specified exchange-traded derivatives contracts, or any combination of the foregoing;

(b) he is or becomes an undischarged bankrupt whether in Singapore or elsewhere;  
or

(c) he has been convicted of a relevant offence.

(4) A corporation otherwise exempted under sub-paragraph (1) shall not be or shall cease to be so exempted if —

(a) the corporation or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) execution against the corporation or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;

(c) a receiver, a receiver and manager, a judicial manager or such other person having the powers and duties of a receiver, receiver and manager or judicial manager, has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the corporation or its substantial shareholder;

- (d) the corporation or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (e) the corporation or its substantial shareholder has been convicted of a relevant offence.

*Trading in futures contracts*

**Exemption from requirement to hold capital markets services licence to deal in capital markets products that are ~~trade in~~ futures contracts**

3.—(1) The following persons ~~are shall be~~ exempted from the requirement to hold a capital markets services licence to carry on business in **dealing in capital markets products that are ~~trading in~~ futures contracts**, or in the case of an individual, from section 99B(1) of the Act, subject to the conditions and restrictions specified:

- (a) a person when carrying on business **in dealing in capital markets products that are futures contracts** for his own account (which includes for the avoidance of doubt, the account of any branch of such person) or an account belonging to and maintained wholly for the benefit of a related corporation or connected person;
- (b) a person whose ~~dealing trading~~ in **capital markets products that are** futures contracts is solely incidental to his carrying on business in fund management, **providing custodial services or product financing**;
- (c) an order-filler, provided that he shall not be or shall cease to be exempted if —
- (i) he is or becomes a representative or employee of the holder of a capital markets services licence to **deal in capital markets products that are futures contracts** ~~trade in futures contracts~~;
  - (ii) he is or becomes an undischarged bankrupt whether in Singapore or elsewhere; or

(iii) he has been convicted of a relevant offence;

(d) a corporation person who –

- (i) carries on business in Singapore in dealing in capital markets products that are futures contracts only with accredited investors, expert investors, or institutional investors;
- (ii) deals only in block futures contracts;
- (iii) does not carry any customer's positions, margin or account in its books;
- (iv) does not accept money or assets from any customer as settlement of, margin for, or to guarantee or secure, any futures contract entered into by that customer;
- (v) is not, whether as principal or agent, a party to any futures contract;
- (vi) is not a member of any approved exchange or recognised market operator or overseas exchange or approved clearing house or recognised clearing house or overseas clearing house which provides the person with the rights to trade on-screen or clear with the approved exchange, recognised market operator or overseas exchange or approved clearing house, recognised clearing house or overseas clearing house; and
- (vii) is registered with the Authority in accordance with sub-paragraph (6), and the registration is and continues to be published on the Authority's website;

(e) a trustee of a qualified arrangement in respect of futures contracts, whose dealing in capital markets products that are futures contracts is solely incidental to the management and administration of such arrangement.

(2) For the purposes of sub-paragraph (1)(d) –

(a) a corporation person otherwise exempted under sub-paragraph (1)(d) shall not be or shall cease to be so exempted if it also carries on business in dealing in capital markets products that are futures contracts other than in accordance with sub-paragraph (1)(a), (b), (c) or (d), as the case may be.

(b) A corporation person otherwise exempted under sub-paragraph (1)(d) shall not be or shall cease to be so exempted if it the person –

- (i) is or becomes the holder of a capital markets services licence to deal in capital markets products that are futures contracts;
- (ii) has not commenced business in dealing in capital markets products that are futures contracts in accordance with sub-paragraph (1)(d) within 6 months from the date of its registration by the Authority as a Registered Futures Broker under sub-paragraph (6); or
- (iii) has ceased to carry on business in dealing in capital markets products that are futures contracts in accordance with sub-paragraph (1)(d), and has not resumed business in the same regulated activity in accordance with that sub-paragraph, within a continuous period of 6 months from

the date of cessation.

(3) An individual shall not be or shall cease to be so exempted from ~~section 99B(1) of the Act the requirement to hold a capital markets services licence to carry on business in dealing in capital markets products that are futures contracts~~ if –

- (a) he is or becomes a representative or employee of the holder of a capital markets services licence to deal in capital markets products that are futures contracts;
- (b) he is or becomes an undischarged bankrupt whether in Singapore or elsewhere; or
- (c) he has been convicted of a relevant offence.

(4) A corporation otherwise exempted under sub-paragraph (1)~~(c)~~ shall not be or shall cease to be so exempted if –

- (a) the corporation or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) execution against the corporation or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, a judicial manager or such other person having the powers and duties of a receiver, receiver and manager or judicial manager, has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the corporation or its substantial shareholder;
- (d) the corporation or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (e) the corporation or its substantial shareholder has been convicted of a relevant offence.

(5) A corporation which is exempted under sub-paragraph (1)(d) shall –

- (a) take reasonable measures to verify that the persons on behalf of whom ~~it~~ carries on business in dealing in capital markets products that are futures contracts are only accredited investors, expert investors, or institutional investors; and
- (b) ensure that proper records are kept of any document evidencing the status of such persons.

(6) A corporation which seeks to be exempted under sub-paragraph (1)(d) shall register with the Authority as a Registered Futures Broker by lodging with the Authority a notice of commencement of its business in Form xx, not later than 14 days after the commencement of its business in dealing in capital markets products that are futures contracts.

(7) The Authority may refuse to register a corporation under sub-paragraph (6) unless the corporation has demonstrated to the Authority's satisfaction that it is able to fulfil the requirements under sub-paragraph 1(d) and comply with sub-paragraphs (8), (9) and (11).

(8) A Registered Futures Broker must lodge with the Authority –

- (a) a notice of change in particulars in Form xx providing any change in the particulars in the notice under sub-paragraph (6), not later than 14 days after the date of the change;
- (b) a notice of cessation of business in Form xx not later than 14 days after the cessation of its business of dealing in capital markets products that are futures contracts; and
- (c) an annual declaration in Form xx within 14 days after the end of its financial year.

(9) A corporation shall not hold represent itself out as a Registered Futures Broker, unless

–

- (a) it has fulfilled all the requirements in sub-paragraph (1)(d); and
- (b) the registration of the corporation as a Registered Futures Broker is and continues to be published on the Authority's website.

(10) The Authority may cancel the registration of a corporation under sub-paragraph (6) if the person is issued with a capital markets services licence in dealing in capital markets products that are futures contracts.

(11) A Registered Futures Broker shall –

- (a) ensure that it is able to pay its debts in full as they fall due and that the value of its assets shall not be less than the value of its liabilities (including contingent liabilities) at all times; and
- (b) at all times employ at least 2 persons in Singapore, each of whom has at least 5 years' experience that is relevant to its business of in dealing in capital markets products that are futures contracts.

(12) If a corporation which carries on business in dealing in capital markets products that are futures contracts in reliance on sub-paragraph (1)(d) fails to meet any of the criteria in sub-paragraphs (1)(d)(i) to (1)(d)(vi) or to comply with sub-paragraph (8), (9) or (11), or becomes aware that it will likely fail to meet any of those criteria or to comply with sub-paragraphs (8), (9) or (11), it shall immediately notify the Authority.

(13) If the Authority becomes aware that a corporation which carries on business in dealing in capital markets products that are futures contracts in reliance on sub-paragraph (1)(d) fails to meet any of the criteria in sub-paragraphs (1)(d)(i) to (1)(d)(vi) or to comply with sub-paragraph (8), (9) or (11), the Authority may direct the Registered Futures Broker to operate its business in such manner and on such conditions as the

Authority may impose, and the corporation to whom such direction is issued shall comply with the direction.

(14) A Registered Futures Broker shall, in respect of each ~~of its~~ financial year –

- (a) prepare a true and fair profit and loss account and a balance-sheet made up to the last day of the financial year; and
- (b) lodge that account and balance-sheet, together with a certification from its auditor that the Registered Futures Broker has complied with the criteria in sub-paragraphs (1)(d)(i) to (1)(d)(vi) and ~~sub-~~paragraph (11), with the Authority within 5 months, or such extension thereof permitted by the Authority, after the end of its financial year.

(15) Each corporation exempted under sub-paragraph (1)(d) shall furnish to the Authority, at such time and in such manner as the Authority may direct, all such information concerning ~~its~~ business ~~of~~ dealing in capital markets products that are futures contracts, as the Authority may reasonably require.

### **Exemption from requirement to hold capital markets services licence to deal in capital markets products that are over-the-counter derivatives contracts**

3A.—(1) The following persons are exempt from the requirement to hold a capital markets services licence to carry on business in dealing in capital markets products that are over-the-counter derivatives contracts, ~~or in the case of an individual, from section 99B(1) of the Act~~, subject to the conditions and restrictions specified:

- (a) a person who carries on business in dealing in capital markets products that are over-the-counter derivatives contracts for his own account ~~(which includes for the avoidance of doubt, the account of any branch of such person)~~ or an account belonging to and maintained wholly for the benefit of a related corporation ~~or connected person~~, and with another related corporation ~~or connected person~~;
- (b) a person who carries on business in dealing in capital markets products that are over-the-counter derivatives contracts ~~and that are not securities-based derivatives contracts which the underlying thing is a commodity~~, with accredited investors, expert investors, or institutional investors;
- (c) a person who –
  - (i) carries on business in dealing in capital markets products that are over-the-counter derivatives contracts for his own account ~~(which includes for the avoidance of doubt, the account of any branch of such person)~~ or an account belonging to and maintained wholly for the benefit of a related corporation ~~or connected person~~; ~~and~~
  - (ii) enters into ~~the~~ over-the-counter derivatives contracts with ~~or through~~—
    - (A) the holder of a capital markets services licence to deal in capital markets products that are over-the-counter derivatives contracts;
    - (B) a bank licensed under the Banking Act ~~(Cap.19)~~;

- (C) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);
  - (D) a bank licensed, registered, approved or otherwise regulated under the laws of a jurisdiction outside Singapore to conduct banking business; or
  - (E) a corporation or firm licensed or registered to carry on business in dealing in capital markets products that are over-the-counter derivatives contracts under the laws of a jurisdiction outside Singapore ~~;~~ and
- ~~(iii) does not receive a spread or other remuneration in connection with dealing in capital markets products that are over-the-counter derivatives contracts. [For consistency with paragraphs 2(1)(a) and 4(1)(aa) which does not include this condition.]~~
- (d) a person whose dealing in capital markets products that are over-the-counter derivatives contracts is solely incidental to his carrying on business in fund management, providing custodial services or product financing;
- (e) a corporation person who –
- (i) carries on business in Singapore in dealing in capital markets products that are over-the-counter derivatives contracts only with accredited investors, expert investors, or institutional investors;
  - (ii) does not carry any customer's position in over-the-counter derivatives contracts, margin or account in its books;
  - (iii) does not accept money or assets from any customer as settlement of, margin for, or to guarantee or secure, any over-the-counter derivatives contract entered into by that customer;
  - (iv) is not, whether as principal or agent, a party to any over-the-counter derivatives contract;
  - (v) is not a member of any approved exchange, recognised market operator or overseas exchange or approved clearing house, recognised clearing house or overseas clearing house which provides the person with the rights to trade on-screen or clear with the approved exchange, recognised market operator or overseas exchange or approved clearing house, recognised clearing house or overseas clearing house; and
  - (vi) is registered with the Authority in accordance with sub-paragraph (8) and the registration is and continues to be published on the Authority's website;
- (f) an approved global trading company, within the meaning of section 43P(3) of the Income Tax Act (Cap. 134), which carries on business in dealing in capital markets products that are over-the-counter derivatives contracts in which the underlying thing or underlying things consists solely of one or more commodities is a commodity;



- (g) a corporation when entering into ~~subscribing for~~ over-the-counter derivatives contracts on behalf of a customer as nominee, provided that such corporation —
- (i) has no interest in the over-the-counter derivatives contracts subscribed for other than as a bare trustee; and
  - (ii) is a wholly-owned subsidiary of —
    - (A) the holder of a capital markets services licence to deal in capital markets products that are over-the-counter derivatives contracts;
    - (B) a bank licensed under the Banking Act (Cap. 19);
    - (C) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);
    - (D) a finance company licensed under the Finance Companies Act (Cap. 108);
    - (E) an approved exchange or a recognised market operator;
    - (F) an approved holding company; or
    - (G) an approved clearing house or a recognised clearing house;
- (h) a trustee of a qualified arrangement in respect of over-the-counter derivatives contracts, whose dealing in capital markets products that are over-the-counter derivatives contracts is solely incidental to the management and administration of such arrangement;
- (i) a person who carries on business in dealing in capital markets products that are excluded OTC commodity derivatives contracts.
- ~~(2) For the purposes of sub-paragraph (1)(c)(iii), “remuneration” includes monetary or non-monetary incentive, benefit or reward, as the case may be.~~
- (3) For the purposes of —
- (a) ~~sub-paragraph (1)(b), a person otherwise exempted under sub-paragraph (1)(b) shall not be or shall cease to be so exempted if he also carries on business in dealing in capital markets products that are over-the-counter derivatives contracts which the underlying thing is a commodity other than in accordance with sub-paragraph (1)(b);~~
  - (b) ~~sub-paragraph (1)(f), a person otherwise exempted under sub-paragraph (1)(f) shall not be or shall cease to be so exempted if he also carries on business in dealing in capital markets products that are not over-the-counter derivatives contracts which underlying thing is a commodity; and~~
  - (c) sub-paragraphs (1)(e)(a), ~~(c), and (d)~~, a corporation person otherwise exempted under sub-paragraphs (1)(e)(a), ~~(c) or (d)~~ shall not be or shall cease to be so exempted if it also carries on business in dealing in capital markets products that are over-~~the~~-counter derivatives contracts other than in accordance with sub-paragraph (1)(a), (b), (c) or (d), as the case may be.

*[For consistency with paragraphs 2 and 3 where the only condition relates to*

*Registered Futures Brokers under paragraph 3(1)(d).]*

(4) A ~~corporation person~~ otherwise exempted under sub-paragraph (1)(e) shall not be or shall cease to be so exempted if ~~it~~—

- (a) ~~he~~ is or becomes the holder of a capital markets services licence to deal in capital markets products that are over-the-counter derivatives contracts;
- (b) ~~he~~ has not commenced business in dealing in capital markets products that are over-the-counter derivatives contracts in accordance with sub-paragraph 1(e) within 6 months from the date of its registration by the Authority as a Registered Over-the-counter Derivatives Broker under sub-paragraph (8); or
- (c) ~~he~~ has ceased to carry on business in dealing in capital markets products that are over-the-counter derivatives contracts in accordance with sub-paragraph 1(e), and has not resumed business in the same regulated activity in accordance with that sub-paragraph, within a continuous period of 6 months from the date of cessation.

(5) An individual shall not be or shall cease to be so exempted from section 99B(1) of the Act ~~the requirement to hold a capital markets services licence to carry on business in dealing in capital markets products that are over-the-counter derivatives contracts~~ if —

- (a) he is or becomes a representative or employee of the holder of a capital markets services licence ~~on dealing~~ in capital markets products that are over-the-counter derivatives contracts;
- (b) he is or becomes an undischarged bankrupt whether in Singapore or elsewhere; or
- (c) he has been convicted of a relevant offence.

(6) A corporation otherwise exempted under sub-paragraph (1)(e) shall not be or shall cease to be so exempted if —

- (a) the corporation or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) execution against the corporation or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, a judicial manager or such other person having the powers and duties of a receiver, receiver and manager or judicial manager, has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the corporation or its substantial shareholder;
- (d) the corporation or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise ~~or~~ scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (e) the corporation or its substantial shareholder has been convicted of a relevant offence.

(7) A corporation which is exempted under sub-paragraph (1)(e) shall —

(a) take reasonable measures to verify that the persons on behalf of whom ~~it~~ carries on business in dealing in capital markets products that are over-the-counter derivatives contracts are only accredited investors, expert investors, or institutional investors; and

(b) ensure that proper records are kept of any document evidencing the status of such persons.

(8) A corporation which seeks to be exempted under sub-paragraph (1)(e) shall register with the Authority as a Registered Over-the-counter Derivatives Broker by lodging with the Authority a notice of commencement of its business in Form xx not later than 14 days after the commencement of its business in dealing in capital markets products that are over-the-counter derivatives contracts.

(9) The Authority may refuse to register a corporation under sub-paragraph (8) unless the corporation has demonstrated to the Authority's satisfaction that it is able to fulfil the requirements under sub-paragraphs 1(e), and comply with sub-paragraphs (10), (11) and (13).

(10) A Registered Over-the-counter Derivatives Broker must lodge with the Authority -

(a) a notice of change in particulars in Form xx, providing any change in the particulars in the notice under sub-paragraph (8), not later than 14 days after the date of the change;

(b) a notice of cessation of business in Form xx not later than 14 days after the cessation of ~~its~~ business in dealing in capital markets products that are over-the-counter derivatives contracts; and

(c) an annual declaration in Form xx within 14 days after the end of its financial year.

(11) A corporation shall not hold itself out as a Registered Over-the-counter Derivatives Broker, unless –

(a) it has fulfilled all the requirements in sub-paragraph (1)(e); and

(b) the registration of the corporation as a Registered Over-the-counter Derivatives Broker is and continues to be published on the Authority's website.

(12) The Authority may cancel the registration of a corporation under sub-paragraph (8) if the corporation is issued with a capital markets services licence in dealing in capital markets products that are over-the-counter derivatives contracts.

(13) A Registered Over-the-counter Derivatives Broker shall –

(a) ensure that it is able to pay its debts in full as they fall due and that the value of its assets shall not be less than the value of its liabilities (including contingent liabilities) at all times; and

(b) all times employ at least 2 persons in Singapore, each of whom has at least 5 years' experience that is relevant to its business ~~of~~ dealing in capital markets products that are over-the-counter derivatives contracts.

(14) If a corporation which carries on business in dealing in capital markets products that are over-the-counter derivatives contracts in reliance on sub-paragraph (1)(e) fails to meet any of the criteria in sub-paragraphs (1)(e)(i) to (1)(e)(vi) ~~(v)~~ or to comply with sub-paragraph (10), (11) or (13), or becomes aware that it will likely fail to meet any of those criteria or to comply with sub-paragraph (10), (11) ~~,~~ or (13), it shall immediately notify the Authority.

(15) If the Authority becomes aware that a corporation which carries on business in dealing in capital markets products that are over-the-counter derivatives contracts in reliance on sub-paragraph (1)(e) fails to meet any of the criteria in sub-paragraphs (1)(e)(i) to (1)(e)(vi) ~~(v)~~ or to comply with sub-paragraphs (10), (11) or (13), the Authority may direct the Registered Over-the-counter Derivatives Broker to operate its business in such manner and on such condition as the Authority may impose, and the corporation to whom such direction is issued shall comply with the direction.

(16) A Registered Over-the-counter Derivatives Broker shall, in respect of ~~its~~ each financial year –

(a) prepare a true and fair profit and loss account and a balance-sheet made up to the last day of the financial year; and

(b) lodge that account and balance-sheet, together with a certification from its auditor that the Registered Over-the-counter Derivatives Broker has complied with the criteria in sub-paragraphs (1)(e)(i) to (1)(e)(vi) ~~(v)~~ and sub-paragraph (13), with the Authority within 5 months, or such extension thereof permitted by the Authority, after the end of its financial year.

(17) Each ~~corporation~~ ~~person~~ exempted under sub-paragraph (1) ~~(b), (e) or (f)~~ shall furnish to the Authority, at such time and in such manner as the Authority may direct, all such information concerning ~~its~~ ~~his~~ business ~~of~~ dealing in capital markets products that are over-the-counter derivatives contracts as the Authority may reasonably require.

### *Leveraged Foreign Exchange Trading*

#### **Exemption from requirement to hold capital markets services licence to deal in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading ~~carry out leveraged foreign exchange trading~~**

4.—(1) The following persons ~~are~~ ~~shall be~~ ~~exempted~~ from the requirement to hold a capital markets services licence to carry on business in dealing in capital markets contracts that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading ~~leveraged foreign exchange trading~~, or in the case of an individual, from section 99B(1) of the Act, subject to the conditions and restrictions specified:

(a) a person who carries on business in dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading ~~leveraged foreign exchange trading~~ —

(i) ~~for his own account~~ (which includes for the avoidance of doubt, the account of any branch of such person) or an account belonging to and maintained wholly for the benefit of a related corporation or connected person, and with another related corporation or connected person; ~~or~~

(aa) a person who —

(i) carries on business in dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading ~~(ii)~~ for his own account (which includes for the avoidance of doubt, the account of any branch of such person) or an account belonging to and maintained wholly for the benefit of a related corporation or connected person; and

(ii) enters into the spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, ~~and~~ with or through —

(A) the holder of a capital markets services licence to carry on business in dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading ~~leveraged foreign exchange trading~~;

(B) a bank licensed under the Banking Act (Cap. 19);

(C) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);

(D) a bank licensed, registered, approved or otherwise regulated under the laws of a jurisdiction outside Singapore to conduct banking business; or

(E) a corporation or firm licensed or registered to carry on business in dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading ~~leveraged foreign exchange trading~~ under the laws of a jurisdiction outside Singapore;

(ab) a person who carries on business in dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading with accredited investors, expert investors or institutional investors;

(b) a person whose dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading ~~leveraged foreign exchange trading~~ is solely incidental to his carrying on business in fund management, providing custodial services or product financing.

[S 385/2012 wef 07/08/2012]

(c) [Deleted by S 385/2012 wef 07/08/2012]

~~(2) A person otherwise exempted under sub-paragraph (1) shall not be or shall cease to be so exempted if he also carries on business for dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading leveraged foreign exchange trading other than in accordance with sub-paragraph (1)(a) or (b).~~

*[For consistency with paragraphs 2, 3 and 3A where the only condition relates to Registered Futures Brokers under paragraph 3(1)(d) and Registered OTC Derivatives Brokers under paragraph 3A(1)(e).]*

*[S 385/2012 wef 07/08/2012]*

(3) An individual ~~otherwise exempted under sub-paragraph (1)(a)~~ shall not be or shall cease to be so exempted from section 99B(1) of the Act if —

- (a) he is or becomes a representative or employee of the holder of a capital markets services licence to carry out **dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading leveraged foreign exchange trading**;
- (b) he is or becomes an undischarged bankrupt whether in Singapore or elsewhere; or
- (c) he has been convicted of a relevant offence.

*[S 385/2012 wef 07/08/2012]*

(4) A corporation otherwise exempted under sub-paragraph (1)~~(a)~~ shall not be or shall cease to be so exempted if —

- (a) the corporation or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) execution against the corporation or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, a judicial manager or such other person having the powers and duties of a receiver, receiver and manager or judicial manager, has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the corporation or its substantial shareholder;
- (d) the corporation or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (e) the corporation or its substantial shareholder has been convicted of a relevant offence.

*[S 385/2012 wef 07/08/2012]*

(4A) [Deleted by S 385/2012 wef 07/08/2012]

(5) [Deleted by S 385/2012 wef 07/08/2012]

(6) [Deleted by S 385/2012 wef 07/08/2012]

(7) [Deleted by S 385/2012 wef 07/08/2012]

(8) [Deleted by S 385/2012 wef 07/08/2012]

### **Fund Management**

#### **Exemption from requirement to hold capital markets services licence for fund management**

5.—(1) The following persons shall be exempted from the requirement to hold a capital markets services licence to carry on business in fund management, **or in the case of an individual, from section 99B(1) of the Act**, subject to the conditions and restrictions specified:

- (a) a headquarters company or Finance and Treasury Centre which carries on a class of business involving fund management but only to the extent that the business in fund management has been approved as a qualifying service in relation to that headquarters company or Finance and Treasury Centre under section 43E(2)(a) or 43G(2)(a) of the Income Tax Act (Cap. 134), as the case may be;
- (b) a corporation which carries on business in fund management for or on behalf of any of its related corporations **or connected persons**, so long as in carrying on such business, none of the ~~capital markets products or spot foreign exchange contracts securities, positions in futures contracts, or foreign exchange arising from foreign exchange trading or leveraged foreign exchange trading~~ being managed, are
  - (i) held on trust for another person by the second-mentioned corporation **or connected person**;
  - (ii) the result of any investment contract entered into by the second-mentioned corporation **or connected person**; or
  - (iii) beneficially owned by any person, other than the first-mentioned or second-mentioned corporation **or connected person**;
- (c) an individual who carries on business in fund management for or on behalf of
  - (i) his spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister; or
  - (ii) a firm, **limited liability partnership** or corporation in which he or any of the persons referred to in sub-paragraph (i) has control of 100% of the voting power, whether such control is exercised individually or

jointly with any person referred to in that sub-paragraph, so long as in carrying on such business, none of the ~~capital markets products or spot foreign exchange contracts~~ securities, positions in futures contracts, or foreign exchange arising from foreign exchange trading or leveraged foreign exchange trading being managed, are —

- (A) held on trust for another person by any person referred to in sub-paragraph (i) or (ii);
- (B) the result of any investment contract entered into by any person referred to in sub-paragraph (i) or (ii); or
- (C) beneficially owned by any person, other than the individual or any person referred to in sub-paragraph (i) or (ii);

*[S 170/2013 wef 28/03/2013]*

*(d) [Deleted by S 385/2012 wef 07/08/2012]*

~~(e) the holder of a capital markets services licence to deal in capital markets products that are futures contracts trade in futures contracts which carries on business in fund management in accordance with regulation 20;~~

*[Regulation 20 does not deal with fund management.]*

- (f) a Service Company whose business in fund management is solely incidental to its carrying on business as an agent of a member of Lloyd's;
- (g) a financial adviser —
  - (i) who is licensed under the Financial Advisers Act (Cap. 110) in respect of the provision of the financial advisory services specified in paragraphs 1 and 3 of the Second Schedule to the Act; and
  - (ii) who carries on business in fund management for or on behalf of another person (referred to in this paragraph as the client) in connection with any advice that is given by the licensed financial adviser to the client concerning units in a collective investment scheme or a portfolio of units in various collective investment schemes,

provided that —

- (A) the scope of such business is confined to the management of one or more portfolios comprising solely of units in one or more collective investment schemes, all of which are not listed on an approved exchange, recognised market operator or overseas exchange a securities exchange;
- (B) in carrying on business in fund management for or on behalf of the client, the licensed financial adviser obtains the prior approval of the client in respect of each and every transaction for or on behalf of the client and only receives the client's money or property in respect of approved transactions and services rendered by the licensed financial adviser in relation to such business; and
- (C) where the licensed financial adviser or any of its representatives receives



the client's money or property under sub-paragraph (B), such money or property, except to the extent that it is received wholly for services rendered by the licensee, shall be handed over to —

- (CA) the **provider** ~~manager or trustee~~ of the collective investment scheme;
- (CB) the holder of a capital markets services licence under the Act to provide custodial services ~~for securities~~ which is authorised by the client to receive the client's money or property; or
- (CC) a person exempt under **paragraph 6 of this Schedule** ~~the Act~~ from holding a capital markets services licence to provide custodial services ~~for securities~~ which is authorised by the client to receive the client's money or property,

not later than the business day immediately following the day on which the licensed financial adviser **or its representatives** receives the money or property or at a later date if, and only if, it has the client's prior written consent to do so;

*[S 373/2005 wef 01/07/2005]*

*[S 385/2012 wef 07/08/2012]*

- (h) a person who carries on business in fund management in Singapore on behalf of qualified investors where the assets managed by it comprise securities issued by one or more corporations or interests in bodies unincorporate, where the sole purpose of each such corporation or body unincorporate is to hold, whether directly or through another entity or trust, immovable assets;

*[S 385/2012 wef 07/08/2012]*

*[S 170/2013 wef 28/03/2013]*

- (i) a corporation —
  - (i) which carries on business in Singapore in fund management on behalf of not more than 30 qualified investors, of which not more than 15 are collective investment schemes, closed-end funds, or limited partnerships referred to in sub-paragraph (3)(e); and
  - (ii) which is registered with the Authority in accordance with sub-paragraph (7) and the registration is and continues to be published on the Authority's website.;

*[S 385/2012 wef 07/08/2012]*

- (j) ~~A person who carries on business in fund management in Singapore by managing the property of, or operating, a collective investment scheme that does not invest in which property does not comprise of~~ any capital markets products, and of which all of the participants are qualified investors.

- (2) For the purposes of sub-paragraph (1) —

(a) a person otherwise exempted under sub-paragraph (1) shall not be or shall cease to be so exempted if he also carries on business in fund management other than in accordance with sub-paragraph (1)(a), (b), (c), ~~(e)~~, (f), **(g)**, (h), ~~(i)~~ or (j), as the case may be;

[S 385/2012 wef 07/08/2012]

(b) a person who is exempted under sub-paragraph (1)(a) or (b) may, in ascertaining the number of qualified investors for the purpose of exemption under sub-paragraph (1)(i), exclude those persons on behalf of whom he carries on business in fund management under sub-paragraph (1)(a) or (b);

[S 170/2013 wef 28/03/2013]

(bb) a person otherwise exempted under sub-paragraph (1)(i) shall not be or shall cease to be so exempted if —

(i) it is or becomes the holder of a capital markets services licence in respect of fund management ~~any regulated activity~~;

[S 385/2012 wef 07/08/2012]

(ii) it has not commenced business in fund management in accordance with sub-paragraph (1)(i) within 6 months from the date of its registration by the Authority as a Registered Fund Management Company under sub-paragraph (7); or

[S 385/2012 wef 07/08/2012]

(iii) it has ceased to carry on business in fund management in accordance with sub-paragraph (1)(i), and has not resumed business in the same regulated activity in accordance with that sub-paragraph, within a continuous period of 6 months from the date of cessation.

[S 373/2005 wef 01/07/2005]

[S 385/2012 wef 07/08/2012]

(c) a person who is otherwise exempted under sub-paragraph (1)(i) and is also exempted under regulation 27(1)(d) of the Financial Advisers Regulations (Rg 2) from the requirement to hold a financial adviser's licence under the Financial Advisers Act (Cap. 110) in respect of providing any financial advisory service, other than ~~arranging contracts of insurance in respect of life policies~~, shall not be or shall cease to be exempted under sub-paragraph (1)(i) if the number of qualified investors on behalf of whom he carries on business in fund management and the number of accredited investors, expert investors or institutional investors to whom he provides financial advisory services exceed 30 in total.

~~other than —~~

~~(i) — Marketing of collective investment schemes; and~~

~~(ii) Arranging contracts of insurance in respect of life policies;~~

~~shall not be or shall cease to be exempted under sub-paragraph (1)(i) if the number of qualified investors on behalf of whom he carries on business in fund management and the number of accredited investors, expert investors or institutional investors to whom he provides financial advisory services exceed 30 in total~~

(3) In this paragraph, each of the following persons, schemes and funds shall be considered as one qualified investor:

(a) an accredited investor, other than —

- (i) one who is a participant in a collective investment scheme referred to in sub-paragraph (b);
- (ii) one who is a holder of a unit in a closed-end fund referred to in sub-paragraph (c);
- (iii) one which is a corporation referred to in section 4A(1)(a)(ii) of the Act or an entity referred to in regulation 2(b) of the Securities and Futures (Prescribed Specific Classes of Investors) Regulations 2005 (G.N. No. S 369/2005) —

(A) which is related to or controlled by a person referred to in sub-paragraph (1)(i), or a key officer or substantial shareholder of such person; and

[S 385/2012 wef 07/08/2012]

(B) the shares or debentures of which are, after 28th May 2008, the subject of an offer or invitation for subscription or purchase made to any person who is not an accredited investor; or

- (iv) a corporation or an entity which is a collective investment scheme or a closed-end fund the units of which are, after 28th May 2008, the subject of an offer or invitation made to any person who is not an accredited investor;

(b) a collective investment scheme the units of which are the subject of an offer or invitation for subscription or purchase made —

- (i) in Singapore only to accredited investors or institutional investors or both; or

[S 385/2012 wef 07/08/2012]

- (ii) elsewhere if, after 28th May 2008, such offer or invitation is made only to accredited investors, or investors in an equivalent class under the

laws of the country or territory in which the offer or invitation is made, or institutional investors or both;

*[S 385/2012 wef 07/08/2012]*

- (c) a closed-end fund the units of which are the subject of an offer or invitation for subscription or purchase made only to accredited investors, or investors in an equivalent class under the laws of the country or territory in which the offer or invitation is made, or institutional investors or both;

*[S 385/2012 wef 07/08/2012]*

- (d) an institutional investor, other than a collective investment scheme;

*[S 385/2012 wef 07/08/2012]*

- (e) a limited partnership, where the limited partners comprise solely of accredited investors or investors in an equivalent class under the laws of the country or territory in which the partnership is formed, or institutional investors, or both;

*[S 385/2012 wef 07/08/2012]*

- (f) any other person that the Authority may, from time to time, by a guideline issued by the Authority, determine;

*[S 385/2012 wef 07/08/2012]*

(4) An individual shall not be or shall cease to be exempted from section 99B(1) of the Act ~~the requirement to hold a capital markets services licence to carry on business in fund management~~ if —

- (a) he is or becomes a representative or employee of the holder of a capital markets services licence for fund management;
- (b) he is or becomes an undischarged bankrupt whether in Singapore or elsewhere; or
- (c) he has been convicted of a relevant offence.

(5) A corporation otherwise exempted under sub-paragraph (1) ~~(a), (b), (h) or (i)~~ shall not be or shall cease to be so exempted if —

- (a) the corporation or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) execution against the corporation or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, a judicial manager or such other person having the powers and duties of a receiver, receiver and manager or judicial manager, has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the corporation or its substantial shareholder;
- (d) the corporation or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its

creditors, being a compromise or scheme of arrangement that is still in operation; or

- (e) the corporation or its substantial shareholder has been convicted of a relevant offence.

*[S 385/2012 wef 07/08/2012]*

*[S 170/2013 wef 28/03/2013]*

- (6) A corporation person who is exempted under sub-paragraph (1)(i) shall —

- (a) take reasonable measures to verify that the persons on behalf of whom he carries on business in fund management are qualified investors; and
- (b) ensure that proper records are kept of any document evidencing the status of such persons.

*[S 385/2012 wef 07/08/2012]*

(7) A corporation which seeks to be exempted under sub-paragraph (1)(i) shall register with the Authority as a Registered Fund Management Company by lodging with the Authority a notice of commencement of its business in Form 22A prior to the commencement of its business in fund management, accompanied by a non-refundable annual fee which shall be paid in the manner specified by the Authority in writing.

*[S 385/2012 wef 07/08/2012]*

(7A) A corporation shall not represent itself as a Registered Fund Management Company, unless —

- (a) it has fulfilled all the requirements in sub-paragraph (1)(i); and
- (b) the registration of the corporation as a Registered Fund Management Company is and continues to be published on the Authority's website.

*[S 385/2012 wef 07/08/2012]*

(7B) The Authority may refuse to register a corporation under sub-paragraph (7) unless the corporation has demonstrated to the Authority's satisfaction that —

- (a) it is able to fulfil the requirements under sub-paragraph (1)(i)(i) and regulation 13 or both regulations 13 and 13B (as the case may be) as applied to a Registered Fund Management Company under regulation 54A(1);

*[S 170/2013 wef 28/03/2013]*

- (b) if it is incorporated in Singapore, its base capital, or if it is a foreign company, its net head office funds, is not less than \$250,000;

- (c) it employs at least 2 persons in Singapore, each of whom has at least 5 years' experience that is relevant to the fund management activities it intends to carry out; and

- (d) the total value of its managed assets does not exceed \$250 million.

*[S 385/2012 wef 07/08/2012]*

(7C) The Authority may cancel the registration of a corporation under sub-paragraph (7) if the corporation is issued with a capital markets services licence in fund management.

*[S 385/2012 wef 07/08/2012]*

(7D) A Registered Fund Management Company shall not cause or permit —

(a) where it is incorporated in Singapore, its base capital; or

(b) where it is a foreign company, its net head office funds,

to fall below \$250,000.

*[S 385/2012 wef 07/08/2012]*

(7E) A Registered Fund Management Company shall at all times employ at least 2 persons **in Singapore**, each of whom has at least 5 years' experience that is relevant to the fund management activities it is carrying out.

*[S 385/2012 wef 07/08/2012]*

(7F) The total value of the managed assets of a Registered Fund Management Company shall not at any time exceed \$250 million.

*[S 385/2012 wef 07/08/2012]*

(7G) If a corporation which carries on business in fund management in reliance on sub-paragraph (1)(i) fails to meet the criterion in sub-paragraph (1)(i)(i) or to comply with sub-paragraph (7D), (7E) or (7F), or becomes aware that it will likely fail to meet any of those criteria or to comply with sub-paragraph (7D), (7E) or (7F), it shall —

(a) immediately notify the Authority; and

(b) cease any increase in positions, and not accept assets for fund management, until such time as advised by the Authority.

*[S 385/2012 wef 07/08/2012]*

(7H) If the Authority becomes aware that a corporation which carries on business in fund management in reliance on sub-paragraph (1)(i) fails to meet any criterion in sub-paragraph (1)(i)(i) or to comply with sub-paragraph (7D), (7E) or (7F), the Authority may direct the Registered Fund Management Company to operate its business in such manner and on such conditions as the Authority may impose, and the corporation to whom such direction is issued shall comply with the direction.

*[S 385/2012 wef 07/08/2012]*

(7I) A Registered Fund Management Company shall lodge with the Authority—

(a) a notice of change of particulars in Form 23A providing any change in the particulars in the notice lodged under sub-paragraph (7), not later than 14 days after the date of the change;

- (b) a notice of cessation of business in Form 24A not later than 14 days after~~at any time prior to~~ the cessation of its business in fund management; and
- (c) an annual declaration in Form 25A within one month after the end of each of its financial years.

*[S 385/2012 wef 07/08/2012]*

(7J) A Registered Fund Management Company shall submit an auditor's report in Form 25B, no later than 5 months after the end of each of its financial years.

*[S 385/2012 wef 07/08/2012]*

(7K) In this paragraph, "managed assets", in relation to a corporation (including one that is a Registered Fund Management Company), means all of the following:

- (a) moneys and assets contracted to, drawn down by or are under the discretionary authority granted by the customer to the corporation and in respect of which it is carrying out fund management;
- (b) moneys and assets contracted to the corporation, and are under the non-discretionary authority granted by the customer to the corporation, and in respect of which the corporation is carrying out fund management;
- (c) moneys and assets contracted to the corporation, but which have been sub-contracted to another party and for which the other party is carrying out fund management, whether on a discretionary authority granted by the customer or otherwise.

*[S 385/2012 wef 07/08/2012]*

(7L) In sub-paragraph (7K), moneys and assets are contracted to a corporation if they are the subject-matter of a contract for fund management between the corporation and its customer.

*[S 385/2012 wef 07/08/2012]*

(8) Every person exempted under sub-paragraph (1)(a), (b)(e), (h) or (i) shall furnish to the Authority, at such time and in such manner as the Authority may direct, all such information concerning his business in fund management as the Authority may reasonably require.

*[S 385/2012 wef 07/08/2012]*

(9) *[Deleted by S 385/2012 wef 07/08/2012]*

### ~~Providing Custodial Services for Securities~~

#### **Exemption from requirement to hold capital markets services licence to provide custodial services ~~for securities~~**

6.—(1) The following persons shall be exempted from the requirement to hold a capital markets services licence to carry on business in providing custodial services ~~for securities~~, or in the case of an individual, from section 99B(1) of the Act, subject to the conditions and restrictions specified:

- (a) a trustee of a qualified arrangement in respect of ~~specified products securities~~ when carrying out his duties of managing and administering such arrangement;
- (b) a company or society registered under the Insurance Act (Cap. 142) when carrying on business in providing custodial services only in respect of units of any collective investment scheme;
- (c) a Service Company acting as an agent in Singapore for any member of Lloyd's, when carrying on business in providing custodial services only in respect of units of any collective investment scheme.

(2) Part III of these Regulations shall, with the necessary modifications, apply to each of the persons referred to in sub-paragraph (1)(b) and (c) as if it were the holder of a capital markets services licence and, where applicable, to a representative of any of these persons when acting as such, as if he were the holder of a representative's licence.

### ~~Advising on Corporate Finance~~

#### **Exemption from requirement to hold capital markets services licence to advise on corporate finance**

7.—(1) The following persons shall be exempted from the requirement to hold a capital markets services licence to carry on business in advising on corporate finance, or in the case of an individual, from section 99B(1) of the Act, subject to the conditions and restrictions specified:

- (a) a person who carries on business in giving advice on corporate finance to a related corporation or connected person, provided that —
  - (i) such advice is not specifically given for the making of any offer of ~~specified products securities~~ to the public by the related corporation or connected person; and
  - (ii) where the related corporation or connected person is —
    - (A) a public company;
    - (B) listed on an approved exchange, a recognised market operator or an overseas exchange ~~a securities exchange~~; or
    - (C) a subsidiary of a corporation listed on an approved exchange, a recognised market operator or an overseas exchange ~~a securities exchange~~,



such advice is not circulated to the shareholders (other than shareholders who are accredited investors, **expert investors or institutional investors**) of (in the case of sub-paragraph (A) or (B)) the related corporation **or connected person** or (in the case of sub-paragraph (C)) the listed corporation, or is otherwise made known to the public;

- (b) a person resident in Singapore who carries on business in Singapore in giving advice on corporate finance to accredited investors, **expert investors or institutional investors**, provided that —
- (i) such advice is not specifically given for the making of any offer of **specified products** ~~securities~~ to the public by the accredited investor, **expert investor or institutional investor** to whom the advice was given; and
  - (ii) where the accredited investor, **expert investor or institutional investor** is —
    - (A) a public company;
    - (B) listed on **an approved exchange, a recognised market operator or an overseas exchange** ~~a securities exchange~~; or
    - (C) a subsidiary of a corporation listed on **an approved exchange, a recognised market operator or an overseas exchange** ~~a securities exchange~~,

such advice is not circulated to the shareholders (other than shareholders who are accredited investors, **expert investors or institutional investors**) of (in the case of sub-paragraph (A) or (B)) the accredited investor, **expert investor or institutional investor** or (in the case of sub-paragraph (C)) the listed corporation, or is otherwise made known to the public;

- (c) a person who advises another person concerning any arrangement, reconstruction or take-over of any corporation or any of the corporation's assets or liabilities, provided that —
- (i) such advice is not specifically given for the making of any offer of **specified products** ~~securities~~ to the public by the second-mentioned person; and
  - (ii) where the second-mentioned person is —
    - (A) a public company;
    - (B) listed on **an approved exchange, a recognised market operator or an overseas exchange** ~~a securities exchange~~; or
    - (C) a subsidiary of a corporation listed on **an approved exchange, a recognised market operator or an overseas exchange** ~~a securities exchange~~,

such advice is not circulated to the shareholders (other than shareholders who are accredited investors, **expert investors or institutional investors**) of (in the case of sub-paragraph (A) or (B)) the second-mentioned person or (in the case of sub-paragraph (C)) the listed corporation, or is otherwise made

known to the public;

- (d) a person who carries on business in giving advice to another person concerning compliance with or in respect of any laws or regulatory requirements relating to the raising of funds not involving any ~~specified products~~ securities.

(2) A person otherwise exempted under sub-paragraph (1)(a), (b), ~~or (c) or (d)~~ shall not be or shall cease to be so exempted if he also carries on business in advising on corporate finance other than in accordance with sub-paragraph (1)(a), (b), (c) or (d).

(2A) A person otherwise exempted under sub-paragraph (1)(b) shall not be or shall cease to be so exempted if —

- (a) he is ~~or becomes~~ the holder of a capital markets services licence ~~to advise on corporate finance in respect of any regulated activity~~; or
- (b) he has not commenced business in advising on corporate finance in accordance with sub-paragraph (1)(b) within 6 months from the date of commencement of business as specified in the notice that the person has lodged with the Authority in accordance with sub-paragraph (6)(a); or
- (c) he has ceased to carry on business in advising on corporate finance in accordance with sub-paragraph (1)(b), and has not resumed business in the same regulated activity in accordance with that sub-paragraph, within a continuous period of 6 months from the date of cessation.

*[S 373/2005 wef 01/07/2005]*

(3) An individual ~~otherwise exempted under sub-paragraph (1)~~ shall not be or shall cease to be so exempted ~~from section 99B(1) of the Act~~ if —

- (a) he is or becomes a representative or employee of the holder of a capital markets services licence in advising on corporate finance;
- (b) he is or becomes an undischarged bankrupt whether in Singapore or elsewhere; or
- (c) he has been convicted of a relevant offence.

(4) A corporation otherwise exempted under sub-paragraph (1) shall not be or shall cease to be so exempted if —

- (a) the corporation or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) execution against the corporation or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, a judicial manager or such other person having the powers and duties of a receiver, receiver and manager or judicial manager, has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the corporation or its substantial shareholder;

- (d) the corporation or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (e) the corporation or its substantial shareholder has been convicted of a relevant offence.
- (5) A person who is exempted under sub-paragraph (1)(b) shall —
- (a) take reasonable measures to verify that the persons to whom he carries on business in advising on corporate finance are accredited investors, **expert investors or institutional investors**; and
- (b) ensure that proper records are kept of any document evidencing the status of such persons.
- (6) A person who is exempted under sub-paragraph (1)(b) shall lodge with the Authority —
- (a) a notice of commencement of business in Form 22 not later than 14 days after the commencement of his business in advising on corporate finance;
- (b) a notice of change of particulars in Form 23 providing any change in the particulars in the notice under sub-paragraph (a), not later than 14 days after the date of the change;
- (c) a notice of cessation of business in Form 24 not later than 14 days after the cessation of his business in advising on corporate finance; and
- (d) a declaration in Form 25 within 14 days after the end of the financial year of the person.
- (7) Every person exempted under sub-paragraph (1)(b) shall furnish to the Authority, at such time and in such manner as the Authority may direct, all such information concerning his business in advising on corporate finance as the Authority may reasonably require.
- (8) A person exempted under sub-paragraph (1)(b) who has, at any time before 1st October 2002, lodged a notice of commencement of business in the prescribed form under regulation 41(5)(a) of the revoked Securities Industry Regulations (Cap. 289, Rg 1) in relation to the activity specified in paragraph (a) of the definition of “investment adviser” in section 2 (1) of the repealed Securities Industry Act (Cap. 289) shall be deemed to have lodged a notice of commencement of business in compliance with sub-paragraph (6)(a).

## Other Exemptions

### Exemption from section 99B(1) of ~~the~~ Act

8.—(1) Subject to sub-paragraph (7), an employee of the holder of a capital markets services licence for dealing in ~~capital markets products that are specified products securities, units in a collective investment scheme, over the counter derivatives contracts, and specified exchange-traded derivatives contracts~~ securities ~~is shall be~~ exempted from section 99B(1) of the Act when carrying out any of the following for the account of the licence holder (which includes for the avoidance of doubt, the account of any branch of such holder) or for an account belonging to and maintained wholly for the benefit of a corporation related to the licence holder or the holder's connected person:

- (a) dealing in ~~capital markets products that are specified products securities, units in a collective investment scheme, or specified exchange-traded derivatives contracts, or any combination of the foregoing, securities on an approved exchange, a securities exchange or~~ recognised market operator or an overseas exchange; or
- (b) dealing in ~~capital markets products that are specified products securities, units in a collective investment scheme, or specified exchange-traded derivatives contracts, or any combination of the foregoing, securities~~ with —
  - (i) an institutional investor; or
  - (ii) an entity licensed, approved, registered or otherwise regulated by a regulator who is responsible for the supervision of financial institutions in a jurisdiction other than Singapore.

(2) Subject to sub-paragraph (7), an employee of the holder of a capital markets services licence for ~~dealing in capital markets products that are futures contracts trading in futures contract~~ ~~shall be is~~ exempted from section 99B(1) of the Act when carrying out regulated activities for the account of the licence holder (which includes for the avoidance of doubt, the account of any branch of such holder) or for an account belonging to and maintained wholly for the benefit of a corporation related to the licence holder or the holder's connected person.

(3) Subject to sub-paragraph (7), an employee of the holder of a capital markets services licence for ~~dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading leveraged foreign exchange trading~~ ~~shall be is~~ exempted from section 99B(1) of the Act when carrying out any of the following for the account of the licence holder (which includes for the avoidance of doubt, the account of any branch of such holder) or for an account belonging to and maintained wholly for the benefit of a corporation related to the licence holder or the holder's connected person:

- (a) ~~dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading leveraged foreign exchange trading~~ with an institutional investor; ~~or~~
- (b) ~~dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading leveraged foreign~~

~~exchange trading~~ with an entity licensed, approved, registered or otherwise regulated by a regulator who is responsible for the supervision of financial institutions in a jurisdiction other than Singapore.

(4) Subject to sub-paragraph (7), an employee of a person exempted under section 99(1)(a), (b) or (c) of the Act in respect of the activity of dealing in ~~capital markets products that are specified products~~ securities, units in a collective investment scheme or ~~specified exchange traded derivatives contracts, or any combination of the foregoing securities~~ shall be ~~is~~ exempted from section 99B(1) of the Act when carrying out any of the following for the account of the exempt person (which includes for the avoidance of doubt, the account of any branch of such exempt person) or for an account belonging to and maintained wholly for the benefit of a corporation related to the exempt person ~~or the exempt person's connected person~~:

- (a) dealing in ~~capital markets products that are specified products~~ securities, units in a collective investment scheme, or ~~specified exchange traded derivatives contracts, or any combination of the foregoing securities~~ on an approved exchange, a securities exchange or recognised market operator ~~or overseas exchange~~; ~~or~~
- (b) dealing in ~~capital markets products that are specified products~~ securities, units in a collective investment scheme, ~~over the counter derivatives contracts, or specified exchange traded derivatives contracts, or any combination of the foregoing securities~~ with —
  - (i) an institutional investor; or
  - (ii) an entity licensed, approved, registered or otherwise regulated by a regulator who is responsible for the supervision of financial institutions in a jurisdiction other than Singapore.

(5) Subject to sub-paragraph (7), an employee of a person exempted under section 99(1)(a), (b) or (c) of the Act in respect of the activity of ~~dealing in capital markets products that are futures contracts trading in futures contract~~ shall be ~~is~~ exempted from section 99B(1) of the Act when carrying out that activity for the account of the exempt person (which includes for the avoidance of doubt, the account of any branch of such exempt person) or for an account belonging to and maintained wholly for the benefit of a corporation related to the exempt person ~~or the exempt person's connected person~~.

(6) Subject to sub-paragraph (7), an employee of a person exempted under section 99(1)(a), (b) or (c) of the Act in respect of the activity of ~~dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading leveraged foreign exchange trading~~ shall be ~~is~~ exempted from section 99B(1) of the Act when carrying out any of the following for the account of the exempt person (which includes for the avoidance of doubt, the account of any branch of such exempt person) or for an account belonging to and maintained wholly for the benefit of a corporation related to the exempt person ~~or the exempt person's connected person~~:

- (a) dealing in ~~capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading leveraged foreign exchange trading~~ with an institutional investor; ~~or~~

(b) dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading ~~leveraged foreign exchange trading~~ with an entity licensed, approved, registered or otherwise regulated by a regulator who is responsible for the supervision of financial institutions in a jurisdiction other than Singapore.

(7) Sub-paragraphs (1) to (6) —

(a) shall not apply to any activity of dealing in capital markets products ~~securities, trading in futures contract or leveraged foreign exchange trading~~ which involves customers' accounts; and

(b) shall only apply if the employee, when dealing in capital markets products ~~securities, trading in futures contract or leveraged foreign exchange trading~~ —

(i) does not have access to customers' trade and order information; and

(ii) is not in a position to control or affect the order or priority of executing customers' orders.

(8) A person ~~shall~~, when acting as a representative of the holder of a capital markets services licence or person exempt under section 99(1)(a), (b) or (c) of the Act in respect of the activity of ~~product financing securities financing~~ or providing custodial services ~~for securities~~, ~~be is~~ exempted from section 99B(1) of the Act, as the case may be.

[S 709/2010 wef 26/11/2010]

### Exemption for ~~approved exchange~~ holding company

9. An ~~approved exchange~~ holding company ~~shall be~~ ~~is~~ exempted from the requirement to hold a capital markets services licence in respect of any regulated activity insofar as its carrying out of such regulated activity is solely incidental to its operation as an ~~approved exchange~~ holding company.

## THIRD SCHEDULE

Regulation 6(1) and (6)

## FEES

	<i>First column</i>	<i>Second column</i>	<i>Third column</i>	<i>Fourth column</i>
<i>No.</i>	<i>Provision of Act</i>	<i>Matter</i>	<i>Amount</i>	<i>Manner and Time of Payment</i>
1.	Section 84(3)	Application for grant of a capital markets services licence	\$1,000	In the manner specified by the Authority, at time of application
2.	Section 85(1)	Annual licence fee for capital markets services licence in respect of —		(a) Where the holder has no GIRO arrangement with the Authority, in the manner specified by the Authority by the date specified in the fee advice.
		(a) dealing in securities —		(b) Where the holder has GIRO arrangement with the Authority, by GIRO by the date specified by the Authority in the fee advice.
		(i) where the holder is a member of the Singapore Exchange Securities Trading Limited; or	\$8,000	
		(ii) where the holder is any other person;	\$4,000	
		(c) fund management;	\$4,000	
		(d) advising on corporate finance;	\$4,000	
		(e) trading in futures contracts;	\$2,000	
		(f) leveraged foreign exchange trading;	\$2,000	
		(g) securities financing;	\$2,000	
		(h) providing custodial services for securities;	\$2,000	
		(i) real estate investment trust management;	\$4,000	

## ANNEX B

- (j) providing credit rating services \$4,000
- |    |                |  |  |
|----|----------------|--|--|
| 3. | Section 90(2)  | Application to add type(s) of regulated activity to capital markets services licence   | Payable by GIRO by the 16th day of the month following that in which application is made   |
| 4. | Section 99K(1) | Lodgment of documents under section 99H of the Act for appointment of appointed, provisional or temporary representative   | <p>(a) Where principal is an applicant for capital markets services licence, in the manner specified by the Authority, at time of lodgment.</p> <p>(b) Where principal is a holder of capital markets services licence, and —</p> <p style="padding-left: 20px;">(i) it has no GIRO arrangement with the Authority, in the manner specified by the Authority, by the date specified in the fee advice; or</p> <p style="padding-left: 20px;">(ii) it has GIRO arrangement with the Authority, by GIRO by the 16th day of the month following that in which lodgment is made.</p> |
| 5. | Section 99K(2) | <p>Annual fee for retention of name of appointed or provisional representative in the public register of representatives in the year in which the name is first entered in the register, where the regulated activity is —</p> <p style="padding-left: 40px;">(a) dealing in securities;</p> | <p>Amount derived from the formula:</p> $\frac{A}{365} \times Y$ <p>where:</p>   |

“A” is the number of days between the date the name of appointed or provisional representative is first entered in the register



and 31st December  
of same year, both  
dates inclusive; and

(b) fund management;

“Y” is —

(c) advising on  
corporate finance;

(a) \$700 where the regulated activity or activities is dealing in securities on behalf of a principal who is a member of the Singapore Exchange Securities Trading Limited; or  
(b) Where principal has GIRO arrangement with the Authority, by GIRO following that in which name is entered in the register.

(d) trading in futures contracts;

(b) \$200 where the regulated activity is one of, or the regulated activities are 2 or more of, the following:

(e) leveraged foreign exchange trading;

(i) dealing in securities on behalf of a principal who is any other person;

(f) real estate investment trust management; or

(ii) fund management;

(g) providing credit rating services

(iii) advising on corporate finance;

(iv) trading in futures contracts;

(v) leveraged foreign

		exchange trading;	
		(vi) real estate investment trust management; or	
		(vii) providing credit rating services	
6.	Section 99K(2)	Annual fee for retention of name of appointed or provisional representative in the public register of representatives in any other year, where the regulated activity is —	(a) Where principal has no GIRO arrangement with the Authority, in the manner specified by the Authority by the date specified in the fee advice.
		(a) dealing in securities —	(b) Where principal has a GIRO arrangement with the Authority, by GIRO by the date specified by the Authority in the fee advice.
		(i) where the principal is a member of the Singapore Exchange Securities Trading Limited; or	
		(ii) where the principal is any other person;	
		(c) fund management;	\$200
		(d) advising on corporate finance;	\$200
		(e) trading in futures contracts;	\$200
		(f) leveraged foreign exchange trading;	\$200
		(g) real estate investment trust management; or	\$200
		(h) providing credit rating services,	\$200
		or where there is more than one regulated activity	the higher or highest of the relevant amounts set out above for those regulated activities
7.	Section 99K(3)	Fee payable by a temporary representative for retention of name of temporary representative in the public register of representatives, where the regulated activity is —	(a) Where principal has no GIRO arrangement with the Authority, in the manner specified by the

## ANNEX B

Authority by the date specified in the fee advice.

(a) dealing in securities —

(b) Where principal has GIRO arrangement with the Authority, by GIRO by the 16th day of the month following that in which name is entered in the register.

(i) where the principal is a member of the Singapore Exchange Securities Trading Limited; or \$700

(ii) where the principal is any other person; \$200

(c) fund management; \$200

(d) advising on corporate finance; \$200

(e) trading in futures contracts; \$200

(f) leveraged foreign exchange trading; \$200

(g) real estate investment trust management; or \$200

(h) providing credit rating services; \$200

or where there is more than one regulated activity the higher or highest of the relevant amounts set out above for those regulated activities

8. Section 99K(4) Resubmission of a form for lodgment of documents under section 99H(1) of the Act for the appointment of appointed, provisional or temporary representative \$100

(a) Where principal has no GIRO arrangement with the Authority, in the manner specified by the Authority by the date specified in the fee advice.

(b) Where principal has GIRO arrangement with the Authority, by GIRO by the 16th day of the month following that in which resubmission is made

9. Section 99A(1) Annual fee payable by Registered Fund Management Company for

Payable by the date and in the manner specified by

the year of commencement of business Amount derived from the formula: the Authority in the fee advice.

$$\frac{B}{365} \times \$1,000$$

where:

“B” is the number of days between 1st April 2013 or the date of commencement of business (whichever is the later), and 31st December of the same year, both dates inclusive

Annual fee payable by Registered Fund Management Company for any year following the year of commencement of business \$1,000

Payable by the date and in the manner specified by the Authority in the fee advice.

- |                    |   |   |  |
|--------------------|---|---|--|
| 10. Section 317(2) | Inspection of and extraction from records | \$20 per name submitted for no inspection inclusive of the goods and services tax chargeable under the Goods and Services Tax Act (Cap. 117A) | (a) Where the person has no GIRO arrangement with the Authority, in the manner specified by the Authority, by the date specified in the fee advice.<br>(b) Where the principal has a GIRO arrangement with the Authority, by GIRO by the 16 <sup>th</sup> day of the month following that in which the request for inspection of and extraction from record is made. |
|--------------------|---|---|--|

#For the avoidance of doubt, this fee is still required to be paid if the date on which the name is entered in the register is 31st December.

*[S 171/2013 wef 02/04/2013]*  
*[S 385/2012 wef 01/04/2013]*  
*[S 170/2013 wef 28/03/2013]*  
*[S 18/2012 wef 17/01/2012]*  
*[S 709/2010 wef 26/11/2010]*

## LEGISLATIVE HISTORY

SECURITIES AND FUTURES (LICENSING AND CONDUCT OF BUSINESS)  
REGULATIONS  
(CHAPTER 289, RG 10)

This Legislative History is provided for the convenience of users of the [Securities and Futures \(Licensing and Conduct of Business\) Regulations](#). It is not part of these Regulations.

**1. G. N. No. S 457/2002—Securities and Futures (Licensing and Conduct of Business) Regulations 2002**

Date of commencement : 1 October 2002

**2. G. N. No. S 457/2002—Securities and Futures (Licensing and Conduct of Business) Regulations 2002**

Date of commencement : 1 April 2003

**3. G. N. No. S 543/2003—Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2003**

Date of commencement : 22 December 2003

**4. [2004 Revised Edition—Securities and Futures \(Licensing and Conduct of Business\) Regulations](#)**

Date of operation : 29 February 2004

**5. G. N. No. S 373/2005—Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2005**

(G.N. No. S 404/2005 — Corrigendum)

Date of commencement : 1 July 2005

**6. G. N. No. S 275/2008—Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2008**

Date of commencement : 28 May 2008

**7. G. N. No. S 374/2008—Securities and Futures (Licensing and Conduct of Business) (Amendment No. 2) Regulations 2008**

Date of commencement : 1 August 2008

**8. G.N. No. S 709/2010—Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2010**

Date of commencement : 26 November 2010

**9. G.N. No. S 418/2011—Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2011**

Date of commencement : 31 August 2011

**10. G.N. No. S 18/2012—Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2012**

Date of commencement : 17 January 2012

**11. G.N. No. S 385/2012—Securities and Futures (Licensing and Conduct of Business) (Amendment No. 2) Regulations 2012**

Date of commencement : 7 August 2012

**12. G.N. No. S 503/2012—Securities and Futures (Licensing and Conduct of Business) (Amendment No. 3) Regulations 2012**

Date of commencement : 19 November 2012

**13. G.N. No. S 170/2013—Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2013**

Date of commencement : 28 March 2013

**14. G.N. No. S 385/2012—Securities and Futures (Licensing and Conduct of Business) (Amendment No. 2) Regulations 2012**

Date of commencement : 1 April 2013

**15. G.N. No. S 171/2013—Securities and Futures (Licensing and Conduct of Business) (Amendment No. 2) Regulations 2013**

Date of commencement : 2 April 2013

**16. G.N. No. S 170/2013—Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2013**

Date of commencement : 28 March 2014

**17. G.N. No. S 523/2016—Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2016**

Date of commencement : 1 November 2016