Facilitating the Provision of Digital Advisory Services

Singapore, 7 June 2017… The Monetary Authority of Singapore (MAS) today releas a consultation paper on proposals to facilitate the provision of digital advisory services[1] (also known as robo-advisory services) in Singapore. The proposals seek support innovation in financial services by recognising the unique characteristics of digital platforms.

2 Financial institutions currently regulated under the Securities and Futures Ac (SFA) and the Financial Advisers Act (FAA) can already provide digital advisory services, and some have started to do so[2]. More recently, MAS has also received indications of interest from new entities intending to offer digital advisory services to retail investors.

3 The availability of digital advisory services will widen investor choice to low-c investment advice. To make it easier for entities offering digital advisory services to operate in Singapore, MAS intends to refine the licensing and business conduct requirements.

4 First, digital advisers that operate as fund managers under the SFA will be allow to offer their services to retail investors even if they do not meet the track record requirement, provided they meet certain safeguards. These safeguards include:

offering diversified portfolios of non-complex assets;

having key management staff with relevant collective experience in fund management and technology; and

undertaking an independent audit of the digital advisory business within one year of operations.

5 Second, digital advisers that operate as financial advisers under the FAA will be allowed to assist their clients to execute their investment transactions (e.g. passing

in collective investment schemes without the need for an additional licence under th SFA. This licensing exemption will also be made available to non-digital advisers.

6 Third, digital advisers can seek exemption from the FAA requirement to collect t full suite of information on the financial circumstances of a client, such as income le and financial commitments, if they can satisfactorily mitigate the risks of providing inadequate advice based on limited client information.

7 While facilitating new business models, MAS will require providers of digital advisory services to manage the new technology risks associated with these activiti Unlike conventional financial advisory services, the delivery of digital advisory servic relies on the use of algorithms and online tools to analyse client data and recommer investment portfolios. As digital advisory tools may be susceptible to technology risk such as erroneous algorithms and cyber threats, MAS has set out expectations on t governance and management oversight to be adopted by digital advisers, including need to put in place a robust framework governing the design, monitoring and testin of algorithms. This includes having adequate board and senior management oversig and compliance arrangements to monitor the quality of advice provided.

8 The public consultation will end on 7 July 2017. A copy of the public consultation paper is available on the MAS website.

[1] *Digital advisory services refer to the provision of advice on investment products using automated, algorithm-based tools. Services provided online with limited or no human interaction with clients.*

[2] *Digital advisers may operate with a fund management licence or a licence for dealing in securities under the SFA, or a financial adviser's licence under the FAA, depending on their business models and the specific activities that they undertake.*

CONSULTATION PAPER

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Provision of Digital Advisory Services

Monetary Authority of Singapore

Contents

1 PREFACE

1.1 Digital advisory services refers to the provision of advice on investment products using automated, algorithm-based tools. There are two types of digital advisory tools: those that financial professionals use to help them service their clients ("**professional-facing tools**"), and those that clients can use directly ("**client-facing tools**") with limited or no human adviser interaction. Digital advisers (also known as robo-advisers) provide digital advisory services using client-facing tools.

1.2 Globally, the take-up of digital advisory services, particularly for client-facing tools, is fast gaining popularity among the growing segment of technology-savvy and self-directed consumers. The Monetary Authority of Singapore ("**MAS**") welcomes the offering of digital advisory services to complement the existing suite of advisory channels as it has the potential to improve consumers' access to low-cost investment advice. Digital advisers typically charge lower advisory fees compared to conventional advisers or fund managers given that they adopt a passive investment strategy.

1.3 Digital advisers may operate under different business models. Besides the use of algorithms to deliver advice, it is common for digital advisory platforms to pass clients' trade orders to brokerage firms for execution. Some may refer clients to open accounts directly with brokerage firms and do not handle clients' moneys as part of the investment process, while others may pool together clients' moneys or assets into client omnibus accounts. Many digital advisers also periodically and automatically adjust their clients' investments to bring their investment portfolios back to the original recommended allocation.

1.4 Digital advisers seeking to offer their platforms to investors in Singapore will have to be licensed for fund management or dealing in securities under the Securities and Futures Act (Cap. 289), and/or providing financial advice on investment products under the Financial Advisers Act (Cap. 110). The type of licensing depends on the operating model of the digital adviser. The licensing and business conduct rules under the Securities and Futures Act (Cap. 289) and Financial Advisers Act (Cap. 110) can accommodate digital advisory services. That said, MAS recognises the need to review the current regulatory framework to ensure that the existing safeguards in the legislation continue to be relevant for the provision of digital advisory services.

1.5 This consultation paper sets out our assessment of the unique characteristics of and risks posed by digital advisory services, along with our regulatory expectations. We have also proposed amendments to our legislations to facilitate the provision of digital advisory services in Singapore. MAS invites interested parties to submit their views and comments on the proposals in this paper.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. Respondents who would like (i) their whole submission or part of it, or (ii) their identity, or (iii) both, to be kept confidential, must expressly state so in their submission to MAS. In addition, MAS reserves

the right not to publish any submission where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

1.6 Please submit your views and comments electronically to digitaladvice_consultation_2017@mas.gov.sg or by post to:

Capital Markets Intermediaries Department I
(Attention: Digital Advisory Working Group)
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117

1.7 Please use this template for your submission and submit all comments to MAS by 7 July 2017.

2 INTRODUCTION

Digital advisory process

2.1 The digital advisory process typically begins with the client inputting an investment amount and answering a series of questions on his risk tolerance, financial objectives and investment time horizon. The digital adviser then analyses the client's responses using algorithms and generates a recommendation to invest into portfolios suited to the client's stated needs. If the client accepts the recommended portfolio, the digital adviser relays the client's trade orders directly to a brokerage firm for execution. Over time, due to market movements, the client's portfolio may deviate from its original recommended asset allocation. The digital adviser will then adjust the client's investments to bring his investment portfolio back to the original recommended allocation (referred to as "**rebalancing**"). This rebalancing of portfolios is automated and performed periodically.

Licensing and regulatory requirements

2.2 We have observed a range of business models for digital advisory services. In Singapore, the relevant regulatory framework applicable to a digital adviser would depend on the operating model of, and specific activities carried out by the digital adviser. Digital advisers which offer a platform for the execution of securities transactions, including for transactions that the digital advisers do not provide advice on, are caught as conducting dealing in securities under the Securities and Futures Act (Cap. 289) (**"SFA"**). Digital advisers that have discretion or control over clients' moneys or assets, including those that operate client omnibus accounts, are typically considered to be conducting fund management under the SFA. Both types of digital advisers are required to hold a capital markets service ("**CMS**") licence unless otherwise exempted. Digital advisers that are licensed under the SFA are required to lodge as exempt financial advisers ("**exempt FAs**") under section 23(1)(d) of the Financial Advisers Act (Cap. 110) ("**FAA**") and comply with the business conduct rules under the FAA.

2.3 MAS also notes that there are digital advisers which carry out limited SFA-regulated activities that are incidental to the provision of financial advice. Examples include digital advisers that relay clients' trade orders to a brokerage firm for execution after advising them[1], or those that rebalance their clients' portfolios to align the portfolios back to their original recommended allocation. In such cases, MAS proposes to allow such digital advisers to operate as licensed or exempt[2] financial advisers ("**FAs**") under the FAA, as the case may be, without the need for additional licensing under the SFA, subject to certain safeguards. Please refer to **Annex A** for a summary of the licensing requirements applicable to digital advisers.

2.4 MAS recognises that there are differences between the business models of digital advisers and that of conventional advisers, given the lack of human intervention in the online advisory process. MAS also notes that digital advisers typically provide advice on exchange

[1] The passing of clients' trade orders that is incidental to the advice provided (in paragraph 2.3) should be distinguished from the execution of clients' trade orders (in paragraph 2.2) that may be done without any advice rendered by the digital adviser.

[2] Examples of exempt FAs include licensed banks, merchant banks, finance companies, insurance companies and insurance brokers.

traded funds ("**ETFs**") with limited use of derivatives ("**traditional ETFs**")[3], as opposed to a full suite of investment products. The risk of a client purchasing an ETF that is beyond his financial means is relatively contained as ETFs are low-cost and diversified investment products. As such, MAS is prepared to grant digital advisers case-by-case exemptions from the need to collect full information on the financial circumstances of a client as prescribed under paragraph 11 of the Notice on Recommendations on Investment Products ("**FAA-N16**") when advising on traditional ETFs, subject to certain conditions.

2.5 Some digital advisers may choose to outsource the development of their client-facing tools to a third party provider[4]. The third party provider does not need to be licensed by MAS if it does not provide financial advisory services directly to clients[5]. Digital advisers should nonetheless subject the third party provider to appropriate due diligence processes to assess the risks associated with the outsourcing arrangement[6].

Unique characteristics and risks of digital advisers

2.6 At the same time, the business model of digital advisers carries with it unique risks not posed by conventional advisers. Both professional and client-facing tools rely on data obtained through a distinct set of questions and algorithms to generate a recommended portfolio for clients. However, with limited or no human intervention in the advisory process, client-facing tools are susceptible to the risk of erroneous or biased algorithms that may not be in the best interest of the client. In placing reliance on client-facing tools, the onus is on the digital adviser to ensure that the tool sufficiently collects and analyses all the information necessary to satisfy the requirements under the FAA. MAS will set out minimum expectations on the standard of governance and management oversight expected of digital advisers, including the responsibility of the Board and Senior Management for the monitoring and control of algorithms.

2.7 Digital advisers principally interact with their customers, transmit, store and process customer information, and generate and deliver investment recommendations electronically. As such, it is imperative that digital advisers meet the expectations in MAS' Notice and Guidelines on Technology Risk Management to mitigate technology risks.

[3] These are non-synthetic and unlevered ETFs, with limited use of derivatives for hedging purposes.

[4] This refers to a situation where a third party provider offers white-labelling services for the use of its platforms or algorithms to a financial institution under a business-to-business arrangement.

[5] Examples include arrangements whereby the third party provider is simply providing white-label technology to the digital adviser, where the advice is provided to clients through the digital adviser.

[6] The Guidelines on Outsourcing set out MAS' expectations of a financial institution that has entered into any outsourcing arrangement or is planning to outsource its business activities to a service provider.

Areas of consultation

2.8 This consultation paper is divided into two parts.

(i) Part A of the consultation paper touches on the unique characteristics of digital advisers and sets out MAS' expectations on the Board and Senior Management to address the risks posed, covering:

- Governance and supervision of algorithms [Section 3]

(ii) Part B of the consultation paper proposes changes to our legislation to facilitate the provision of digital advisory services, covering licensing and regulatory matters. Some of the issues apply to both digital advisers as well as conventional capital markets intermediaries and cover the following areas:

- Suitability of advice [Section 4]
- Portfolio management [Section 5]
- Execution of investment transactions [Section 6]

PART A

3 GOVERNANCE AND SUPERVISION OF ALGORITHMS

3.1 Client-facing tools are primarily algorithm-driven. A fault or bias in the algorithm, whether due to oversight or as a result of poor design, would adversely affect all the clients of the digital adviser.

Developing the client-facing tool

3.2 There are a few factors that digital advisers need to consider when developing their client-facing tools. Firstly, digital advisers need to ensure that the methodology of the algorithm behind the client-facing tool is sufficiently robust. In addition to ensuring that the tool ***collects*** all the necessary information, the algorithms must also be designed to sufficiently ***analyse*** the information to make a suitable recommendation. This includes being able to resolve contradictory or inconsistent responses from the client by asking additional questions or through other means such as by contacting the client to obtain further clarification on his response. Digital advisers must also ensure that the algorithms are able to identify and eliminate clients who are unsuitable for investing even for products such as traditional ETFs.

3.3 Prior to the launch of their client-facing tool, digital advisers should perform sufficient back-tests to ensure that the methodology reliably produces an output that is consistent with the intended investment recommendation. Further, digital advisers should perform a gap analysis against the requirements set out in the Notice and Guidelines on Technology Risk Management and ensure that all identified gaps are adequately mitigated before allowing their client-facing tool to go live. Back-testing and gap analysis should also be performed when changes are made to the tool.

3.4 Digital advisers are also expected to ensure that they are adequately staffed with persons who have the competency and expertise to develop[7] and review the methodology of the algorithms.

Monitoring and testing of algorithms

3.5 Digital advisers are expected to have policies, procedures and controls to monitor and test their algorithms to ensure that they perform as intended. As a guide, digital advisers are minimally expected to have the following processes in place:

(a) access controls to manage changes to the algorithms whenever necessary;

(b) controls to suspend the provision of advice if an error or bias within the algorithm is detected; and

[7] If the digital adviser has chosen to outsource the development of the tool to a third party service provider, the digital adviser would be expected to monitor the service provider in the development, management, or ownership of the algorithms used.

(c) compliance checks on the quality of advice provided by the client-facing tool. Such checks should be conducted regularly and when there are changes to the algorithms. This should include post-transaction sample testing, and should be reviewed by a qualified human adviser to ensure compliance with the requirements under the FAA.

Providing information on algorithms and conflicts of interest

3.6 Digital advisers may base their algorithms on different methodological approaches (e.g. Modern Portfolio Theory). Each algorithm would have different assumptions, underlying rules and limitations. In addition, some digital advisers may override the automated algorithm or temporarily halt the digital advisory service in extreme market conditions.

3.7 We would like to seek views on the extent of information that the digital adviser should disclose on its algorithm to clients, including circumstances under which its algorithm may be overridden or its service suspended, and any adjustments to the algorithm. In particular, whether such disclosure would be useful for clients in making an informed decision on the digital adviser's services.

3.8 In addition, potential conflicts of interest may arise in situations where the algorithm of the client-facing tool is designed to favour or limit its recommendations to selected investment products for which the digital adviser or its affiliate would receive higher commissions. Under paragraph 23 of the Notice on Information to Clients and Product Information Disclosure ("**FAA-N03**"), FAs must disclose, in writing, to their clients any actual or potential conflict of interest arising from any connection to or association with any product provider, including any material information or facts that may compromise their objectivity or independence. Apart from the existing disclosure requirement on conflict of interest under FAA-N03, we also expect digital advisers to disclose to clients the reason for the selectivity and the limitations of the recommendations provided if any, including disclosing to clients that other investments not considered may have characteristics similar or superior to those being analysed. This recognises that without face-to-face interactions with human advisers, clients of a digital adviser may not have the opportunity to seek clarifications on the recommendations provided to them.

Responsibility of the board and senior management

3.9 It is the responsibility of the digital adviser's board[8] and senior management to maintain effective oversight and governance of the client-facing tools, including putting in place systems and processes to ensure a sound risk management culture and environment, as well as compliance with the relevant rules and regulations. Specifically, MAS expects the board and senior management to be responsible for:

(a) approving the design and methodology development of the client-facing tool and ensuring its proper maintenance;

[8] The duties and responsibilities of a director and CEO are as set out in regulations 13 to 13C of the Securities and Futures (Licensing and Conduct of Business) Regulations ("**SF(LCB)R**") and regulation 14 to 14AA of the FAR.

(b) approving the policies and procedures that apply to the systems and processes of the client-facing tool;

(c) maintaining oversight over the management of the client-facing tool, such as designating appropriate personnel to approve changes to algorithms; and

(d) ensuring that the requirements set out in the Notice and Guidelines on Technology Risk Management are adhered to.

Question 1. MAS seeks views on the minimum standard of care that digital advisers should exercise. In particular, we would like to seek views on:

(i) expectations on the processes in paragraphs 3.2 and 3.3, and staff competency requirements in paragraph 3.4 when developing the client-facing tool;

(ii) expectations on the processes that digital advisers should have in place over the monitoring and testing of algorithms used for their client-facing tool in paragraph 3.5;

(iii) the proposed disclosures in paragraphs 3.7 and 3.8; and

(iv) the responsibilities of the board and senior management set out in paragraph 3.9.

PART B

4 SUITABILITY OF ADVICE

4.1 A licensed financial adviser is required to have a reasonable basis for recommending any investment product to a person who may reasonably be expected to rely on the recommendation. This requirement is provided under section 27 of the FAA, and also applies to exempt FAs such as capital markets services licence holders, banks, merchant banks, finance companies, insurance companies and insurance brokers in Singapore. In particular, the FAs are required to give due consideration to the person's investment objectives, financial situation and particular needs when making recommendations on investment products.

4.2 In order for an FA to make a recommendation that takes into account a client's investment objectives, financial situation and particular needs to satisfy the reasonable basis requirement under section 27 of the FAA, the FA is required to take reasonable steps to collect and document the following information from the client, as prescribed under paragraph 11 of the Notice on Recommendations on Investment Products ("**FAA-N16**"):

(a) the financial objectives of the client;

(b) the risk tolerance of the client;

(c) the employment status of the client;

(d) the financial situation of the client, including assets, liabilities, cash flow and income;

(e) the source and amount of the client's regular income;

(f) the financial commitments of the client;

(g) the current investment portfolio of the client, including any life policy;

(h) whether the amount to be invested is a substantial portion of the client's assets; and

(i) for any recommendation made in respect of life policies, the number of dependants of the client and the extent and duration of financial support required for each of the dependants.

4.3 Client-facing tools rely solely on the information provided by the client through responses to a distinct set of questions to make an investment recommendation. MAS notes that generally, client-facing tools require clients to provide information on their financial objective, investment time horizon and risk tolerance. This may not satisfy all the requirements under paragraph 11 of FAA-N16, in particular, limbs (c) to (i) of paragraph 4.2 above.

4.4 We have received feedback from persons interested to offer digital advisory services that it may not be relevant to consider the financial circumstances of a client (i.e. limbs (c) to (i) of paragraph 4.2 above), given that clients have full discretion on the amount they wish to invest and are not subjected to any form of influence or active solicitation on their investment amount during the investment process.

4.5 MAS recognises that there are differences between the business models of digital advisers and that of conventional FAs or those employing professional-facing tools. In particular, clients of digital advisers tend to be self-directed. Further, some digital advisers seek to minimize the risks of providing unsuitable advice through the use of "knock-out" or threshold questions to identify and eliminate clients who are not suitable to participate in the digital advisory platform and may need to consider seeking investment advice from a human adviser. Examples include clients who indicate the need for capital preservation or who state that they cannot afford to lose their principal investment sum. MAS also notes that digital advisers typically provide advice on traditional ETFs, which are low cost and diversified investment products, as opposed to a full suite of investment products. Hence, it may be less crucial for digital advisers to collect all the information in limbs (c) to (i) of paragraph 4.2.

4.6 Having regard to paragraphs 4.4 and 4.5, MAS is prepared to grant case-by-case exemptions to ***fully-automated*** *client-facing tools*, i.e. those with no human adviser intervention in the advisory process[9], from the need to collect full information on the ***financial circumstances*** of a client as prescribed under paragraph 11(c) to (i) of FAA-N16 ***when advising on traditional ETFs*** ("**FAA-N16 Exemption**"). This case-by-case exemption approach allows MAS to engage applicants on the specific safeguards that they intend to put in place to ensure the suitability of their recommendations in spite of incomplete information on the financial circumstances of their clients. As the digital advisory services landscape is still evolving, MAS will continue to monitor developments in this space and may consider revising the regulatory requirements in FAA-N16 in the future where appropriate.

4.7 When assessing such requests, MAS will consider whether a digital adviser's online processes or algorithms exert any influence over the amount that a client will invest. We will also require digital advisers to demonstrate that their "knock-out" or threshold questions can effectively filter out unsuitable clients (e.g. clients who are unwilling to accept any losses to their investment sum) and reduce the risk of mis-buying. To ensure that clients are fully aware of the limitations of the advice provided by fully-automated digital advisory models, digital advisers seeking to apply for the FAA-N16 Exemption will be required to provide a risk disclosure statement to their clients, alerting them to the fact that the recommendation does not take into consideration their financial circumstances, existing investment portfolios or the affordability of the investment. We also expect digital advisers to have controls in place to identify inconsistent responses provided by the client, such as incorporating prompts (e.g. pop-up boxes) in the questionnaire to alert the client when his responses are inconsistent, or a backend data analysis process to automatically flag out inconsistent information provided by the client for follow up by the digital adviser.

[9] A fully-automated digital adviser can still offer human interaction for customer service purposes.

4.8 For avoidance of doubt, digital advisers seeking the FAA-N16 exemption should still take reasonable steps to collect information on the client's financial objectives and risk tolerance to satisfy themselves that the investment recommendation is suitable.

Question 2. MAS seeks views on:

(i) The proposal to grant case-by-case exemptions from the need to collect full information on the financial circumstances of a client as prescribed under paragraph 11(c) to (i) of FAA-N16 for digital advisers operating:
   (a) fully-automated digital advisory models; and
   (b) advising on traditional ETFs only; and

(ii) The proposed safeguards set out in paragraph 4.7 in order to qualify for the FAA-N16 Exemption.

5 PORTFOLIO MANAGEMENT

Provision of fund management services that is incidental to the advice provided

5.1 Currently, a licensed FA is exempted from the need to hold a CMS licence for fund management, where the licensed FA conducts fund management activities that are deemed incidental to its advisory activities in respect of unlisted collective investment scheme ("**CIS**")[10]. To rely on this licensing exemption, the licensed FA is required to, amongst other exemption conditions, obtain prior approval of its client in respect of each and every transaction.

5.2 The current scope of this licensing exemption is restricted to only unlisted CIS, and is only available to licensed FAs. MAS has received feedback from FAs that their clients are increasingly seeking their assistance to advise on investment portfolios consisting of listed CIS such as ETFs. As such, MAS proposes to allow both licensed and exempt FAs to manage their clients' investment portfolios ***comprising of both listed and unlisted CIS*** in connection with their advisory activities. This licensing exemption will be available for both digital advisers and conventional financial advisers. In this regard, MAS intends to:

(a) expand the scope of the current licensing exemption[11] to include listed CIS; and
(b) extend the current licensing exemption to exempt FAs.

Portfolio rebalancing activities

5.3 Digital advisers typically offer rebalancing[12] of clients' portfolios to address portfolio drift which entails bringing the portfolios back to their original recommended asset allocation. Portfolio rebalancing is considered incidental to the advice provided where it is solely for the purpose of aligning the portfolio back to its original recommended allocation and there is no change to the constituents of the portfolio. Such portfolio rebalancing activities are deemed as conducting fund management activities under the SFA and persons who conduct such activities are required to hold a CMS licence in fund management unless otherwise exempted. However, with the proposed exemption set out in paragraph 5.2, digital advisers which are licensed or exempt FAs will be exempted from holding a CMS licence in fund management to engage in portfolio rebalancing activities for portfolios that comprise solely of CIS.

5.4 MAS considers that the risks of rebalancing activities that are incidental to the provision of advice can be mitigated without the need for digital advisers to obtain their clients' approval prior to each and every rebalancing transaction. As such, we intend to dispense with the requirement for digital advisers to obtain prior approval of the client in respect of each and every transaction, subject to safeguards. To ensure that clients agree with and understand what the rebalancing involves, FAs relying on this fund management licensing exemption would be required to disclose and obtain their clients' ***one-time prior acknowledgement*** in writing of the fees and terms of their discretionary portfolio rebalancing services, including but not limited to

[10] Under paragraph 5(1)(g) of the Second Schedule to the SF(LCB)R.
[11] This is to be differentiated from the proposed exemptions in paragraph 4.6 which will only apply to fully automated digital advisers, and when advising on traditional ETFs.
[12] As recommended portfolios typically comprise traditional ETFs or listed CIS, the rebalancing would also be in respect of such products.

details on the frequency, scope and methodology for rebalancing of the portfolio. MAS will also require the digital adviser to ***notify*** clients prior to each and every rebalancing transaction so that clients are given an opportunity to object to the rebalancing transaction, if they wish to.

5.5 In the interim, before the proposed legislative amendments are effected, MAS intends to allow licensed and exempt FAs to apply for the licensing exemptions stated in paragraphs 5.2 and 5.4 on a case-by-case basis.

Corporate track record requirement for retail fund managers

5.6 MAS recognises that some digital advisers whose activities fall into fund management and who intend to obtain a CMS licence in fund management to service retail investors may not be able to meet the five-year corporate track record requirement of managing funds for retail investors in a jurisdiction which has a regulatory framework that is comparable to Singapore. In addition, such digital advisers may not meet the criteria of having total assets under management ("**AUM**") of at least S$1 billion to qualify for such a licence. In order to support the provision of digital advisory services, MAS is prepared to admit digital advisers that do not meet the requisite track record and AUM requirements for a retail fund management company, subject to the following safeguards:

(a) the key individuals need to have relevant collective experience in fund management and technology;

(b) the recommended portfolios should comprise primarily (at least 80%) traditional ETFs, with a cap of 20% invested in listed shares, listed investment grade bonds and foreign exchange contracts for hedging purposes; and

(c) the digital adviser must undergo a post-authorisation audit conducted by an independent third party at the end of its first year of operations on key risk areas. These include prevention of money laundering and countering the financing of terrorism, handling of client moneys and assets, technology risk and suitability of advice.

Question 3. MAS seeks views on the proposals to:

(i) Amend the current licensing exemption for licensed FAs conducting fund management activity ***with the client's prior approval*** for each and every transaction (paragraph 5.2) as follows:
   (a) expand the scope of the licensing exemption to include both listed and unlisted CIS;
   (b) extend the licensing exemption to include exempt FAs;

(ii) Allow licensed and exempt FAs to be exempted from holding a CMS licence in fund management in order to conduct rebalancing of portfolios comprising listed and unlisted CIS and ***without the need to obtain the client's approval*** for each and every transaction, subject to safeguards (paragraph 5.4); and

(iii) Allow digital advisers that do not meet the requisite corporate track record and AUM requirements for a fund management company to service retail clients, subject to safeguards (paragraph 5.6).

Question 4. MAS seeks views on the proposed legislative amendments in paragraph 5(g) of Annex B[13].

[13] Annex B sets out proposed legislative amendments to the Second Schedule of Securities and Futures (Licensing and Conduct of Business) Regulations which was published for consultation on 26 May 2017 as part of the Consultation Paper II on Draft Regulations Pursuant to the Securities and Futures Act.

6 EXECUTION OF INVESTMENT TRANSACTIONS

6.1 Digital advisers typically assist clients in the execution of recommended portfolios by passing clients' trade orders to brokerage firms for execution. Such an activity is caught as dealing in securities under the SFA and persons who carry out such activity are required to hold a CMS licence unless otherwise exempted.

6.2 Licensed and exempt FAs are currently exempted from the requirement to hold a CMS licence for dealing in securities when assisting clients to subscribe for or redeem units in unlisted CIS[14]. MAS had received industry feedback that this licensing exemption was too narrow as it only allowed licensed and exempt FAs to facilitate the subscription and redemption of unlisted CIS. Accordingly, MAS had in June 2015 consulted on the proposal to expand the licensing exemption for licensed and exempt FAs to help clients transact in both listed (e.g. ETFs) and unlisted CIS, provided such dealing is incidental[15] to their advisory activities[16]. With this change, licensed and exempt FAs which assist clients by passing on trade orders of recommended portfolios in respect of listed and unlisted CIS to brokerage firms, will not be required to hold a CMS licence for dealing in securities.

6.3 We note that the risks posed by facilitating the execution of securities transactions other than CIS (e.g. bonds and stocks), are similarly low. However, licensed and exempt FAs which advise on securities other than CIS cannot rely on the same exemption to help their clients transact in these products. To allow licensed and exempt FAs to extend the same ancillary service of helping clients to transact in securities other than CIS which is incidental to their advisory activities, MAS proposes to extend the licensing exemption to any securities[17] defined under the SFA, beyond CIS[18].

6.4 In the interim, before the proposed legislative amendments are effected, MAS intends to allow licensed and exempt FAs to apply for the licensing exemption on a case-by-case basis.

6.5 With the proposal to allow licensed and exempt FAs to facilitate the passing of clients' securities orders beyond ***unlisted*** CIS to brokerage firms for execution, the licensed and exempt FA's obligations to assess a client's knowledge and experience for transacting in specified investment products ("**SIPs**") should similarly be expanded to include listed SIPs, in addition to

[14] Under paragraph 2(j) of the Second Schedule to the SF(LCB)R.

[15] Dealing by the licensed or exempt FA is considered incidental, if the licensed or exempt FA has made a recommendation to the client in respect of a particular CIS, the client accepts the recommendation, and the licensed or exempt FA helps the client to transact in the CIS in accordance with the recommendation.

[16] The proposal to expand the licensing exemption for licensed and exempt FAs to help clients transact in both listed (e.g. ETFs) and unlisted CIS will take effect in the next round of amendments to the SF(LCB)R.

[17] This is to be differentiated from the proposed exemption in paragraph 4.7, which will only apply to fully automated digital advisers, and when advising on traditional ETFs.

[18] FAs who rely on this proposed exemption to facilitate order execution for any securities will still be required to meet the relevant SF(LCB)R conduct requirements. This includes regulations 44, 46, 46A, 47,47B of the SF(LCB)R and regulation 19 of FAR.

unlisted SIPs[19]. Accordingly, MAS is proposing to extend the requirements under FAA-N16 for licensed and exempt FAs to assess their clients' knowledge and experience for transacting in ***listed*** SIPs.

6.6 Currently, as set out in paragraph 29D of the Notice on the Sale of Investment Products ("**SFA 04-N12**"), brokerage firms are required to provide a risk warning statement to clients before allowing them to transact in any overseas-listed investment product for the first time. This risk warning statement is set out in Annex 4 of SFA04-N12. With the proposal to allow licensed and exempt FAs to help pass clients' securities orders beyond unlisted CIS such as overseas-listed ETFs, it is important for licensed and exempt FAs to highlight to clients that the level of investor protection afforded may differ for such overseas-listed investment products that are not regulated by MAS. MAS therefore proposes to require licensed and exempt FAs to furnish a similar risk warning statement to their clients at the point of account opening when advising them on overseas-listed investment products. MAS proposes to include this requirement in FAA-N16.

Question 5. MAS seeks views on the proposal to extend the scope of the licensing exemption for dealing in securities to allow licensed and exempt FAs to deal in securities other than CIS, if such dealing is incidental to their advisory activities (paragraph 6.3).

Question 6. MAS seeks views on the proposed legislative amendments in paragraphs 2(1)(j) and 2(2) of Annex B.

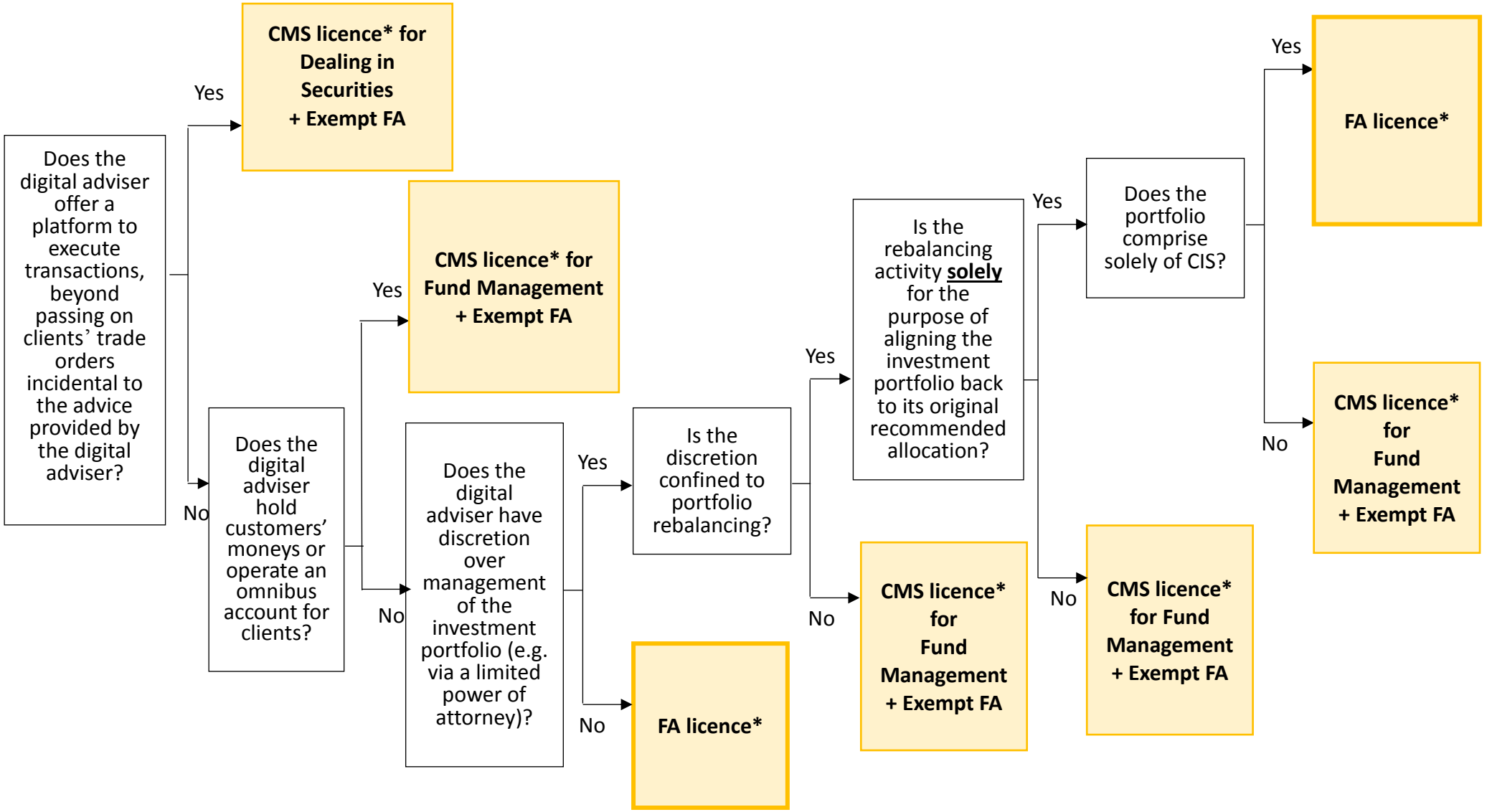
Question 7. MAS seeks views on the proposal in paragraph 6.5 to extend the requirements for licensed and exempt FAs to assess a client's knowledge and experience for transacting in listed SIPs.

Question 8. MAS seeks views on the requirement in paragraph 6.6 for licensed and exempt FAs to furnish a risk warning statement to clients for investments in overseas-listed investment products.

[19] Currently, **FAA-N16** sets out requirements to assess a client's knowledge and experience for transacting in ***unlisted*** SIP. The requirements to assess the client's knowledge and experience for transacting in ***listed*** SIP are set out under **SFA04-N12**.

Annex A

Licensing Considerations for Digital Advisers



* Unless otherwise exempted

Annex B

Draft Amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations

[DISCLAIMER: THIS VERSION OF THE AMENDMENTS IS IN DRAFT FORM AND SUBJECT TO CHANGE. IT IS ALSO SUBJECT TO REVIEW BY THE ATTORNEY-GENERAL'S CHAMBERS.]

Link to draft SF(LCB) Regulations

Monetary Authority of Singapore

SECURITIES AND FUTURES ACT
(CHAPTER 289, SECTIONS 2(1), 84(3), 85(1) AND (4), 86(3), 90(2), 91, 93(1), 94(1), 95(1), 96(2), 97(2), 97A(3), 97B(1), 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, 123, 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]

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;

"designated market-maker" means a corporation who —

(a) carries on business to deal in designated products 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" 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; being a unit that is —

(a) listed for quotation, or has received approval in-principle for listing and quotation, on any approved 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;

"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 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 quotes the prices at which it proposes to acquire or dispose of designated products for its own account; and

(b) is ready, willing and able to effect transactions in the designated products 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;

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

"order-filler" means an individual who is registered as such with an approved exchange for the sole purpose of entering into contracts on the floor of that approved exchange on behalf of members of that approved 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;

"quote" means to display or provide on an organised market of an approved exchange information concerning the particular prices or particular consideration at which offers or invitations to sell, purchase or exchange issued specified products are made on that organised 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 ;

"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 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 borrowing and lending facility" means the facility established and operated by the Central Depository (Pte) Ltd for the lending and borrowing of specified products ;

"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 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 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.

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

2. —(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 securities, units in a collective investment scheme or specified exchange-traded derivatives contracts, 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 for his own account, or an account belonging to and maintained wholly for the benefit of a related corporation, 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 ;

(ii) a bank licensed under the Banking Act;

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

(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 ;

(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, 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 ; or

(vi) the Central Depository (Pte) Ltd pursuant to its specified products 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 is solely incidental to his carrying on business in —

(i) fund management;

(ii) providing custodial services; or

(iii) product financing;

(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 —

(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; or

(ii) that is done by reason only of its entering into a transaction pursuant to its specified products 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;

(ii) a person whose business involves the acquisition and disposal of or holding of specified products (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 ;

(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 ;

(F) an approved holding company ; or

(G) an approved 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 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 for its own account or for the account of any of its related corporations;

(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 securities, units in a collective investment scheme, and specified exchange-traded derivative contracts that are specified products, 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 any securities, units in a collective investment scheme, and specified exchange-traded derivative contracts that are specified products;

(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, 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 being —

(A) units of that scheme or the underlying capital markets products 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 ;

(BB) an exempt person in respect of dealing in 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 sub-paragraph 1(j); or

(BD) an exempt financial adviser as defined in the Financial Advisers Act referred to in sub-paragraph 1(*j*).

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

(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 institutional investor;

(ii) any of its related corporation; or

(iii) any of its connected person;.

(m) a corporation carrying on business in fund management, in respect of dealing in units of a collective investment scheme, in relation to collective investment schemes that is managed by the corporation or any of its related corporations;

(n) a person who carries on business in dealing in capital markets products that are units in a collective investment scheme 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, apply to a person exempted under sub-paragraph (1)(*j*) in respect of its business in dealing in capital markets products that are securities, units in a collective investment scheme, and specified exchange-traded derivatives contracts that are specified products;

(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 securities, units in a collective investment scheme, and specified exchange-traded derivatives contracts that are specified products, receives client's money or property, –

(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 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 representative receives the money or property (referred to in this paragraph as 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 clients 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 securities, units in a collective investment scheme which are listed for quotation on an approved exchange, and specified exchange-traded derivatives contracts that are specified products, 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, 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.

Exemption from requirement to hold capital markets services licence to deal in capital markets products that are futures contracts

3.—(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 futures contracts, subject to the conditions and restrictions specified:

(a) a person when carrying on business in for his own account or an account belonging to and maintained wholly for the benefit of a related corporation or connected person;

(b) a person whose trading in futures contracts is solely incidental to his carrying on business in fund management;

(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;

(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 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 approved clearing house which provides the person with the rights to trade on-screen or clear with the approved exchange or approved 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.

(2) For the purposes of sub-paragraph (1)(*d*) –

(a) a person otherwise exempted under sub-paragraph (1)(*d*) shall not be or shall cease to be so exempted if he 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 person otherwise exempted under sub-paragraph (1)(*d*) shall not be or shall cease to be so exempted if 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 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)(*d*) 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 he 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 subparagraph (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 subparagraphs (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 his business in 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 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 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 subparagraph (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 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 his business in 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, 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 or an account belonging to and maintained wholly for the benefit of a related corporation, and with another related corporation;

(b) a person who carries on business in dealing in capital markets products that are over-the-counter 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 or an account belonging to and maintained wholly for the benefit of a related corporation;

(ii) enters into over-the-counter derivatives contracts with —

(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;

(C) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act;

(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.

(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;

(e) a 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 or approved clearing house which provides the person with the rights to trade on-screen or clear with the approved exchange or approved 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 which underlying thing is a commodity;

(g) a corporation when 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;

(F) an approved holding company; or

(G) an approved 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;

(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 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)(*a*), (c), and (*d*), a person otherwise exempted under sub-paragraphs (1)(*a*), (*c*) or (*d*) 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 other than in accordance with sub-paragraph (1)(*a*), (*c*) or (*d*), as the case may be.

(4) A person otherwise exempted under sub-paragraph (1)(*e*) 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 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 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, 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 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 in 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 eor 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 he carries on business in dealing in capital markets products that are over-the-counter derivatives contracts are only accredited, 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 subparagraph (8) unless the corporation has demonstrated to the Authority's satisfaction that it is able to fulfil the requirements under sub-paragraphs 1*(e)*, (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 his 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 in 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*)(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), (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 subparagraphs (1)(*e*)(i) to (1)(*e*)(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*)(v) and 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 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 his business in dealing in capital markets products that are over-the-counter derivatives contracts as the Authority may reasonably require.

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

4.—(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 contracts that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, 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 —

(i) for his own account and with a related corporation or connected person; or

(ii) for his own account or an account belonging to and maintained wholly for the benefit of a related corporation or connected person, 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;

(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 under the laws of a jurisdiction outside Singapore;

(b) a person whose dealing in capital markets products that are spot foreign exchange contracts for the purposes of leveraged foreign exchange trading is solely incidental to his carrying on business in fund management.

[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 other than in accordance with sub-paragraph (1)(*a*) or (*b*).

[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 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;

(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]*

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, 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, so long as in carrying on such business, none of the capital markets products or spot foreign exchange contracts being managed, are —

(i) held on trust for another person by the second-mentioned corporation;

(ii) the result of any investment contract entered into by the second-mentioned corporation; or

(iii) beneficially owned by any person, other than the first-mentioned or second-mentioned corporation;

(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 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 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 which carries on business in fund management in accordance with regulation 20;

(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) or exempt under section 23 or 100 of that Act 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 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, except for

(BA) where the client's express agreement is obtained for realigning of the portfolio's assets weightings back to the financial adviser's original advice at the point when the original advice is provided; and

(BB) client is notified of the transaction that is solely for the purpose of sub-paragraph (BA), prior to each and every transaction ~~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 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 manager or trustee of the collective investment scheme;

(CB) the holder of a capital markets services licence under the Act to provide custodial services which is authorised by the client to receive the client's money or property; or

(CC) a person exempt under the Act from holding a capital markets services licence to provide custodial services 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 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 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*), (*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 the holder of a capital markets services licence in respect of 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.

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

(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 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 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, 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, 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 at any time prior to the cessation of its business in fund management; and

(c) an annual declaration in Form 25Awithin 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), (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

Exemption from requirement to hold capital markets services licence to provide custodial services

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, subject to the conditions and restrictions specified:

(a) a trustee of a qualified arrangement in respect of specified products 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, subject to the conditions and restrictions specified:

(a) a person who carries on business in giving advice on corporate finance to a related corporation, provided that —

(i) such advice is not specifically given for the making of any offer of specified products to the public by the related corporation; and

(ii) where the related corporation is —

(A) a public company;

(B) listed on an approved exchange ; or

(C) a subsidiary of a corporation listed on an approved exchange

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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 (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 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; or

(C) a subsidiary of a corporation listed on an approved 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 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; or

(C) a subsidiary of a corporation listed on an approved 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.

(2) A person otherwise exempted under sub-paragraph (1)(*a*), (*b*), (*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 the holder of a capital markets services licence in respect of any regulated activity;

(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 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 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 securities, units in a collective investment scheme, over-the-counter derivatives contracts, and specified exchange-traded derivatives contracts is exempt from section 99B(1) of the Act when carrying out any of the following for the account of the licence holder or for an account

belonging to and maintained wholly for the benefit of a corporation related to the licence holder:

(a) 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, on an approved exchange or recognised market operator; or

(b) 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, 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 shall be exempted from section 99B(1) of the Act when carrying out regulated activities for the account of the licence holder or for an account belonging to and maintained wholly for the benefit of a corporation related to the licence holder.

(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 shall be exempted from section 99B(1) of the Act when carrying out any of the following for the account of the licence holder or for an account belonging to and maintained wholly for the benefit of a corporation related to the licence holder:

(a) dealing in capital markets products that are spot foreign exchange contracts for the purposes of 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 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 securities, units in a collective investment scheme or specified exchange-traded derivatives contracts, or any combination of the foregoing shall be exempted from section 99B(1) of the Act when carrying out any of the following for the account of the exempt person or for an account belonging to and maintained wholly for the benefit of a corporation related to the exempt person:

(a) 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 on an approved exchange or recognised market operator; or

(b) dealing in capital markets products that are securities, units in a collective investment scheme, over-the-counter derivatives contracts, or specified exchange-traded derivatives contracts, or any combination of the foregoing 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 shall be exempted from section 99B(1) of the Act when carrying out that activity for the account of the exempt person or for an account belonging to and maintained wholly for the benefit of a corporation related to the exempt 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 shall be exempted from section 99B(1) of the Act when carrying out any of the following for the account of the exempt person or for an account belonging to and maintained wholly for the benefit of a corporation related to the exempt person:

(a) dealing in capital markets products that are spot foreign exchange contracts for the purposes of 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 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 which involves customer account; and

(b) shall only apply if the employee, when dealing in capital markets products —

(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 or providing custodial services, be exempted from section 99B(1) of the Act, as the case may be.

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

Exemption for exchange holding company

9. An exchange holding company shall be 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 exchange holding company.