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SECURITIES AND FUTURES ACT
(CHAPTER 289)

SECURITIES AND FUTURES
(LICENSING AND CONDUCT OF BUSINESS)
(AMENDMENT) REGULATIONS 2013

In exercise of the powers conferred by sections 94, 97 and 341 of the Securities and Futures Act, the Monetary Authority of Singapore hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2013 and shall, with the exception of regulations 2 and 5, come into operation on 28th March 2013.

(2) Regulations 2 and 5 shall come into operation on 28th March 2014.

Amendment of regulation 2

2. Regulation 2 of the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10) (referred to in these Regulations as the principal Regulations) is amended by inserting, immediately after the definition of “guideline issued by the Authority”, the following definition:

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

Amendment of regulation 4A

3. Regulation 4A(3) of the principal Regulations is amended by inserting, immediately after the words “Form 1”, the words “or Form 1A, or both, whichever is applicable,”.

Deletion and substitution of regulations 13, 13A and 13B and new regulation 13C

4. Regulations 13, 13A and 13B of the principal Regulations are deleted and the following regulations substituted therefor:

“Duties of holder of capital markets services licence

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

- (a) comply with all laws and rules governing the holder’s operations; and
- (b) in a manner that is commensurate with the nature, scale and complexity of the business of the holder —
 - (i) implement, and ensure compliance with, effective written policies on all operational areas of the holder, including the holder’s financial policies, accounting and internal controls, and internal auditing;
 - (ii) put in place compliance function and arrangements including specifying the roles and responsibilities of officers and employees of the holder in helping to ensure its compliance with all applicable laws, codes of conduct and standards of good practice in order to protect investors and reduce the holder’s risk of incurring legal or regulatory sanctions that may be imposed by the Authority or any other public authority, financial loss, and reputational damage;
 - (iii) identify, address and monitor the risks associated with the trading or business activities of the holder;
 - (iv) ensure that the business activities of the holder are subject to adequate internal audit;
 - (v) ensure that the internal audit of the holder or the holder’s holding company (if any) includes inquiring into the holder’s compliance with all

relevant laws and all relevant business rules of any securities exchange, futures exchange and clearing house;

- (vi) set out in writing the limits of the discretionary powers of each officer, committee, sub-committee or other group of persons of the holder empowered to commit the holder to any financial undertaking or to expose the holder to any business risk (including any financial, operational or reputational risk);
- (vii) keep a written record of the steps taken by the holder to monitor compliance with its policies, its accounting and operating procedures, and the limits on discretionary powers;
- (viii) ensure the accuracy, correctness and completeness of any report, book or statement submitted by the holder to its head office (if any) or to the Authority; and
- (ix) ensure effective controls and segregation of duties to mitigate potential conflicts of interest that may arise from the operations of the holder.

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

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

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

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

- (a) put in place a risk management framework (that identifies, addresses and monitors the risks associated with assets under its management) which is appropriate

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

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- (e) mitigate conflicts of interest arising from the management of assets and, where appropriate, disclose such conflicts of interest to the customer concerned.

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

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

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

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

- (a) securities which are not listed for quotation or quoted on a securities market;
- (b) interests in a closed-end fund, where —
 - (i) the closed-end fund is to be used for private equity or venture capital investments; and
 - (ii) interests in the closed-end fund are offered only to accredited investors or institutional investors or both,

and the holder has —

- (A) disclosed the fact that the assets are not maintained in a trust account or custody

account in accordance with paragraph (1)(c) to the customer and obtained the customer's acknowledgement of the custody arrangement; and

- (B) arranged for an auditor to audit the assets on an annual basis and furnish a report on the audit to the customer.

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

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

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

Amendment of regulation 39

5. Regulation 39 of the principal Regulations is amended —

- (a) by deleting the word “and” at the end of sub-paragraph (B) of paragraph (3)(a), and by inserting immediately thereafter the following sub-paragraph:

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

- (b) by deleting the word “and” at the end of paragraph (3)(b)(i); and

(c) by inserting, immediately after sub-paragraph (ii) of paragraph (3)(b), the following sub-paragraph:

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

Amendment of regulation 54

6. Regulation 54(1) of the principal Regulations is amended by inserting, immediately after the words “and regulations”, “13(b)(ix),”.

Amendment of regulation 54A

7. Regulation 54A of the principal Regulations is amended —

- (a) by deleting “13A” in paragraph (1) and substituting “13, 13B”; and
- (b) by deleting the words “regulation 13A” in paragraph (2) and substituting the words “regulations 13 and 13B”.

Amendment of regulation 55

8. Regulation 55 of the principal Regulations is amended by deleting “13A” and substituting “13, 13B”.

Amendment of Second Schedule

9. The Second Schedule to the principal Regulations is amended —

- (a) by inserting, immediately before the word “irredeemable” in paragraph (a)(ii) of the definition of “base capital” in paragraph 1, the word “paid-up”;
- (b) by inserting, immediately after the definition of “investment contract” in paragraph 1, the following definition:

““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

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- (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;”;
- (c) by deleting sub-paragraph (c) of paragraph 5(1) and substituting the following sub-paragraph:
- “(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 securities, positions in futures contracts, or foreign exchange arising from foreign exchange trading or leveraged foreign exchange trading being managed, are —
- (A) held on trust for another person by any person referred to in sub-paragraph (i) or (ii);
 - (B) the result of any investment contract entered into by any person referred to in sub-paragraph (i) or (ii); or
 - (C) beneficially owned by any person, other than the individual or any person referred to in sub-paragraph (i) or (ii);”;
- (d) by inserting, immediately after the words “whether directly or through another entity” in paragraph 5(1)(h), the words “or trust”;

(e) by deleting sub-paragraph (b) of paragraph 5(2) and substituting the following sub-paragraph:

“(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);”;

(f) by deleting the words “sub-paragraph (1)(a), (b), (c), (h) or (i)” in paragraph 5(5) and substituting the words “sub-paragraph (1)(a), (b), (h) or (i)”; and

(g) by deleting the words “regulation 13A” in paragraph 5(7B)(a) and substituting the words “regulation 13, or both regulations 13 and 13B (as the case may be)”.

Amendment of Third Schedule

10. The Third Schedule to the principal Regulations is amended —

(a) by inserting, immediately after the words “By cheque” in the fourth column of item 1, the words “or in the manner specified by the Authority,”;

(b) by inserting, immediately after the words “by cheque” in paragraphs (a) and (b)(i) in the fourth column of item 4, the words “or in the manner specified by the Authority,”; and

(c) by inserting, immediately after item 8, the following item:

“10. Section 317(2)	Inspection of and extraction from records	\$20 per name submitted for inspection inclusive of the goods and services tax chargeable under the Goods and Services Tax Act (Cap. 117A)	By cheque at time of inspection”.
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[G.N. Nos. S 373/2005; S 275/2008; S 374/2008; S 709/2010;
S 418/2011; S 18/2012; S 385/2012; S 503/2012]

Made this 25th day of March 2013.

RAVI MENON
Managing Director,
Monetary Authority of Singapore.

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