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SECURITIES AND FUTURES ACT (CHAPTER 289)

SECURITIES AND FUTURES (CLASSES OF INVESTORS) (AMENDMENT NO. 2) REGULATIONS 2019

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

Citation and commencement

1. These Regulations are the Securities and Futures (Classes of Investors) (Amendment No. 2) Regulations 2019 and come into operation on 8 April 2019.

New regulation 3

2. The Securities and Futures (Classes of Investors) Regulations 2018 (G.N. No. S 665/2018) are amended by inserting, immediately after regulation 2, the following regulation:

“Modifications to definition of “accredited investor” for purposes of specified provisions of Act and Securities and Futures (Licensing and Conduct of Business) Regulations

3.—(1) The modified definition of “accredited investor” in paragraph (2) applies for the purposes of the following provisions:

- (a) section 186(1) of the Act;
- (b) paragraph (a) of the definition of “relevant person” in section 275(2) of the Act, for the purposes of sections 251(3) and (4)(a), 275(1) and 276(1)(b), (2)(b), (3)(i)(A) and (4)(i)(A) of the Act;

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- (c) paragraph (a) of the definition of “relevant person” in section 305(5) of the Act, for the purposes of sections 300(2A) and (2B)(a), 305(1) and 305A(1)(b), (2)(i)(A) and (3)(i)(A) of the Act;
 - (d) the definition of “retail customer” in regulation 2 of the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10), for the purposes of regulations 16(1)(b) and (ba) and (3), 17(2), 18A, 19, 20A, 21(2), 26(1)(a), 27A, 34(2), 34A, 35(2), 47BA and 47E(1), (2) and (4) of those Regulations;
 - (e) the definition of “client or member of the public” in regulation 3A(7) of the Securities and Futures (Licensing and Conduct of Business) Regulations, for the purposes of paragraph (5)(c), (d) and (e) of that regulation;
 - (f) regulations 7(2)(b) and (3), 13B(4)(b)(ii), 33(3), 40(1A)(b), 45(2), (6) and (7), 47A(3)(a)(i), 47DA(3)(a), 54B(1) and 65 of the Securities and Futures (Licensing and Conduct of Business) Regulations;
 - (g) paragraph (d) of the definition of “venture capital fund” in regulation 14(8) of the Securities and Futures (Licensing and Conduct of Business) Regulations;
 - (h) the definition of “qualified investor” in paragraph 1 of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations;
 - (i) paragraphs 2(1)(e) and (n), 3(1)(d)(ii) and (4)(a), 3A(1)(b) and (d)(ii) and (4)(a), 5(2) and (3) and 7(1)(a), (b) and (c) and (5) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations.
- (2) Any of the following persons is an accredited investor in relation to a counterparty for the purposes of all the provisions mentioned in paragraph (1), if the person has opted to be treated

by the counterparty as an accredited investor for all the consent provisions:

- (a) an individual mentioned in section 4A(1)(a)(i) of the Act;
- (b) a corporation mentioned in section 4A(1)(a)(ii) of the Act;
- (c) a trustee mentioned in section 4A(1)(a)(iii) of the Act;
- (d) a person mentioned in section 4A(1)(a)(iv) of the Act.

(3) For the purposes of paragraph (2), an individual, corporation, trustee or person (called in this paragraph *A*) opts to be treated by a counterparty as an accredited investor for all the consent provisions if —

- (a) *A* is, and has been assessed by the counterparty to be —
 - (i) an individual mentioned in section 4A(1)(a)(i) of the Act;
 - (ii) a corporation mentioned in section 4A(1)(a)(ii) of the Act;
 - (iii) a trustee mentioned in section 4A(1)(a)(iii) of the Act; or
 - (iv) a person mentioned in section 4A(1)(a)(iv) of the Act,

as the case may be;

- (b) the counterparty has provided to *A* the following statements in writing:
 - (i) a statement that the counterparty has assessed *A* to be a person mentioned in section 4A(1)(a)(i), (ii), (iii) or (iv) of the Act;
 - (ii) a statement that *A* may consent to being treated by the counterparty as an accredited investor for the purposes of all of the consent provisions;

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- (iii) a statement that, if *A* consents in accordance with the statement mentioned in sub-paragraph (ii), *A* may at any time withdraw his or her consent, upon which the counterparty must not (after the period of time specified in the statement) treat *A* as an accredited investor for the purposes of all of the consent provisions;
 - (iv) the general warning set out in the First Schedule;
 - (v) a clear explanation in plain language of the effect under the applicable consent provisions of *A* being treated by the counterparty as an accredited investor, in sufficient detail as to enable *A* to make an informed decision whether to opt to be treated by the counterparty as an accredited investor;
- (c) *A*, having been provided with the statements mentioned in sub-paragraph (b), has given the counterparty a statement in writing, or signed a statement recorded by the counterparty in writing, the effect of which is that —
- (i) *A* knows and understands the consequences of consenting to being treated by the counterparty as an accredited investor for the purposes of all of the consent provisions;
 - (ii) *A* consents to being treated by the counterparty as an accredited investor for the purposes of all of the consent provisions; and
 - (iii) *A* knows that *A* may at any time withdraw his or her consent given under sub-paragraph (ii), upon which the counterparty must not (after the period of time specified in the statement mentioned in sub-paragraph (b)(iii)) treat *A* as an accredited investor for the purposes of any consent provision; and

(d) *A* —

- (i) has not notified the counterparty that he or she withdraws his or her consent under sub-paragraph (c)(i); or
- (ii) has notified the counterparty that he or she withdraws his or her consent under sub-paragraph (c)(ii), but the period of time specified in the statement mentioned in sub-paragraph (b)(iii) has not passed.

(4) Despite paragraph (3), for the purposes of paragraph (2), a corporation, trustee, entity or partnership (called in this paragraph *A*) is treated as having opted to be treated by a counterparty as an accredited investor for all the consent provisions if —

(a) *A* is, and has been assessed by the counterparty to be —

- (i) a corporation mentioned in section 4A(1)(a)(ii) of the Act;
- (ii) a trustee mentioned in section 4A(1)(a)(iii) of the Act;
- (iii) an entity prescribed under regulation 2(2)(a) for the purposes of section 4A(1)(a)(iv) of the Act;
- (iv) a partnership prescribed under regulation 2(2)(b) for the purposes of section 4A(1)(a)(iv) of the Act; or
- (v) a corporation prescribed under regulation 2(2)(c) for the purposes of section 4A(1)(a)(iv) of the Act;

(b) *A* is an existing customer of the counterparty;

(c) the counterparty has provided to *A* the following statements in writing:

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- (i) a statement that the counterparty has assessed *A* to be a person mentioned in section 4A(1)(a)(ii), (iii) or (iv) of the Act;
 - (ii) a statement that the counterparty intends to continue to treat *A* as an accredited investor for the purposes of all of the consent provisions, starting on a date specified in the statement;
 - (iii) a statement that *A* may at any time notify the counterparty that *A* does not consent to being treated by the counterparty as an accredited investor for the purposes of all of the consent provisions, upon which the counterparty must not (after the period of time specified in the statement) treat *A* as an accredited investor for the purposes of all of the consent provisions;
 - (iv) the general warning set out in the First Schedule;
 - (v) a clear explanation in plain language of the effect under the applicable consent provisions of *A* being treated by the counterparty as an accredited investor, in sufficient detail as to enable *A* to make an informed decision whether to give the notification of no consent mentioned in sub-paragraph (d)(ii);
- (d) *A*, having been provided with the statements mentioned in sub-paragraph (c) —
- (i) has not notified the counterparty that *A* does not consent to being treated by the counterparty as an accredited investor for the purposes of all of the consent provisions; or
 - (ii) has notified the counterparty that *A* does not consent to being treated by the counterparty as an accredited investor for the purposes of all of the consent provisions, but the period of time

specified in the statement mentioned in sub-paragraph (c)(iii) has not passed; and

- (e) the counterparty has recorded in writing the fact mentioned in sub-paragraph (d)(i) or (ii), as the case may be.

(5) Despite paragraph (3), for the purposes of paragraph (2), an individual or person (called in this paragraph *A*) is treated on or before 8 July 2020 as having opted to be treated by a counterparty as an accredited investor for all the consent provisions if —

- (a) *A* is, and has been assessed by the counterparty to be —
- (i) an individual mentioned in section 4A(1)(a)(i) of the Act; or
 - (ii) a person prescribed under regulation 2(2)(d) for the purposes of section 4A(1)(a)(iv) of the Act;
- (b) *A* is an existing customer of the counterparty;
- (c) the counterparty has provided to *A* the following statements in writing:
- (i) a statement that the counterparty has assessed *A* to be —
 - (A) an individual mentioned in section 4A(1)(a)(i) of the Act; or
 - (B) a person prescribed under regulation 2(2)(d) for the purposes of section 4A(1)(a)(iv) of the Act;
 - (ii) a statement that the counterparty intends to continue to treat *A* as an accredited investor for the purposes of all of the consent provisions, starting on a date specified in the statement and ending on 8 July 2020;

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- (iii) a statement that *A* may at any time notify the counterparty that *A* does not consent to being treated by the counterparty as an accredited investor for the purposes of all of the consent provisions, upon which the counterparty must not (after the period of time specified in the statement) treat *A* as an accredited investor for the purposes of all of the consent provisions;
 - (iv) the general warning set out in the First Schedule;
 - (v) a clear explanation in plain language of the effect under the applicable consent provisions of *A* being treated by the counterparty as an accredited investor, in sufficient detail as to enable *A* to make an informed decision whether to give the notification of no consent mentioned in sub-paragraph (d)(ii);
- (d) *A*, having been provided with the statements mentioned in sub-paragraph (c) —
- (i) has not notified the counterparty that *A* does not consent to being treated by the counterparty as an accredited investor for the purposes of all of the consent provisions; or
 - (ii) has notified the counterparty that *A* does not consent to being treated by the counterparty as an accredited investor for the purposes of all of the consent provisions, but the period of time specified in the statement mentioned in sub-paragraph (c)(iii) has not passed; and
- (e) the counterparty has recorded in writing the fact mentioned in sub-paragraph (d)(i) or (ii), as the case may be.
- (6) To avoid doubt —
- (a) any notification of withdrawal of consent mentioned in paragraph (3)(d)(ii) does not affect any transaction

entered into before the period of time specified in the statement mentioned in paragraph (3)(b)(iii) has passed; and

- (b) any notification of no consent mentioned in paragraph (4)(d)(ii) or (5)(d)(ii) does not affect any transaction entered into before the period of time specified in the statement mentioned in paragraph (4)(c)(iii) or (5)(c)(iii) (as the case may be) has passed.

(7) To avoid doubt, for the purposes of paragraph (2), a person may opt to be treated by one counterparty as an accredited investor for all the consent provisions but opt not to be treated by another counterparty as an accredited investor for all the consent provisions.

(8) For the purposes of paragraphs (3)(b)(v), (4)(c)(v) and (5)(c)(v), a mere reproduction, restatement, paraphrase or translation of all or any of the consent provisions is not a clear explanation in plain language of the effect under the applicable consent provisions of a person being treated by a counterparty as an accredited investor.

(9) In this regulation —

“consent provision” means any of the following:

- (a) section 186(1) of the Act;
- (b) paragraph (a) of the definition of “relevant person” in section 275(2) of the Act, for the purposes of section 251(3) or (4)(a), 275(1) or 276(1)(b), (2)(b), (3)(i)(A) or (4)(i)(A) of the Act;
- (c) paragraph (a) of the definition of “relevant person” in section 305(5) of the Act, for the purposes of section 300(2A) or (2B)(a), 305(1) or 305A(1)(b), (2)(i)(A) or (3)(i)(A) of the Act;

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- (d) the definition of “retail customer” in regulation 2 of the Securities and Futures (Licensing and Conduct of Business) Regulations, for the purposes of regulation 16(1)(b) or (ba), 17(2), 18A, 19, 20A, 21(2), 26(1)(a), 27A, 34(2), 34A, 35(2), 47BA or 47E(1), (2) or (4) of those Regulations;
 - (e) the definition of “client or member of the public” in regulation 3A(7) of the Securities and Futures (Licensing and Conduct of Business) Regulations, for the purposes of paragraph (5)(c), (d) or (e) of that regulation;
 - (f) regulation 7(3), 13B(4)(b)(ii), 33(3), 40(1A)(b), 45(2) or (7), 47A(3)(a)(i) or 47DA(3)(a) of the Securities and Futures (Licensing and Conduct of Business) Regulations;
 - (g) regulation 4A(6), 28(1)(b), 32C(1)(d), 33(1)(a) or (2), 34(1)(a) or (2), 34A(1)(d)(i) or 35(1)(a)(ii) or (2) of the Financial Advisers Regulations (Cap. 110, Rg 2);
 - (h) the definition of “targeted client” in regulation 18B(9) of the Financial Advisers Regulations;

“counterparty” means any of the following:

- (a) a member of an approved exchange, of which *A* is a customer, that keeps and administers a fidelity fund under section 176(1) of the Act;
- (b) a person who intends to disseminate a preliminary document to *A* under section 251(3) of the Act;
- (c) a person who intends to present to *A* oral or written material on matters contained in a preliminary document under section 251(4) of the Act;

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- (d) a person who intends to make an offer of securities, securities-based derivatives contracts or units in a collective investment scheme mentioned in section 275(1) or 305(1) of the Act to *A*;
 - (e) a person who intends to sell, or intends to make an offer resulting in a sale of, securities or securities-based derivatives contracts mentioned in section 276(1) or (2) of the Act to *A*;
 - (f) a person who intends to transfer securities or securities-based derivatives contracts of a corporation mentioned in section 276(3) or 305A(2) of the Act to *A*;
 - (g) a person who intends to transfer beneficiaries' rights and interest (howsoever described) in a trust mentioned in section 276(4) or 305A(3) of the Act to *A*;
 - (h) a person who intends to first sell, or intends to make an offer resulting in a first sale of, units in a collective investment scheme mentioned in section 305A(1) of the Act to *A*;
 - (i) a holder of a capital markets services licence, or an exempt person, of which *A* is a customer or potential customer;
 - (j) a financial adviser under the Financial Advisers Act (Cap. 110), of which *A* is a customer or potential customer;
 - (k) a financial adviser under the Financial Advisers Act who intends to sell or market a new product to *A*;
 - (l) a licensed financial adviser or exempt financial adviser under the Financial Advisers Act who intends to send a circular or other similar written communication to *A* in which a

recommendation is made in respect of any specified products under regulation 35(1) of the Financial Advisers Regulations;

“existing customer”, in relation to any person, means any other person —

(a) with whom the firstmentioned person entered into transactions immediately before 8 April 2019; and

(b) who was treated by the firstmentioned person as an accredited investor in those transactions;

“new product” has the meaning given by regulation 18B(9) of the Financial Advisers Regulations.”.

New First Schedule

3. The Securities and Futures (Classes of Investors) Regulations 2018 are amended by inserting, immediately after regulation 5, the following Schedule:

“FIRST SCHEDULE

Regulation 3(3)(b)(iv),
(4)(c)(iv) and (5)(c)(iv)

GENERAL WARNING

Accredited investors are assumed to be better informed, and better able to access resources to protect their own interests, and therefore require less regulatory protection. Investors who agree to be treated as accredited investors therefore forgo the benefit of certain regulatory safeguards. For example, issuers of securities are exempted from issuing a full prospectus registered with the Monetary Authority of Singapore in respect of offers that are made only to accredited investors, and intermediaries are exempted from a number of business conduct requirements when dealing with accredited investors. Investors should consult a professional adviser if they do not understand any consequence of being treated as an accredited investor.”.

[G.N. No. S 30/2019]

Made on 7 January 2019.

RAVI MENON
Managing Director,
Monetary Authority of Singapore.

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