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**No. S 385**

**SECURITIES AND FUTURES ACT  
(CHAPTER 289)**

**SECURITIES AND FUTURES  
(LICENSING AND CONDUCT OF BUSINESS)  
(AMENDMENT NO. 2) REGULATIONS 2012**

In exercise of the powers conferred by sections 84, 96, 97, 99, 99A, 100, 104, 123 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 No. 2) Regulations 2012 and shall, with the exception of regulations 4 and 14, come into operation on 7th August 2012.

(2) Regulations 4 and 14 shall come into operation on 1st April 2013.

**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 “quarter”, the following definition:

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

**Amendment of regulation 3**

**3.** Regulation 3(1) of the principal Regulations is amended by deleting the words “ “Regulations and Licensing” ” and substituting the words “ “Regulations and Financial Stability”, “Regulations, Guidance and Licensing”, “Securities, Futures and Fund Management” ”.

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**Amendment of regulation 6**

4. Regulation 6 of the principal Regulations is amended by inserting, immediately after paragraph (4), the following paragraph:

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

**Amendment of regulation 6A**

5. Regulation 6A of the principal Regulations is amended —

- (a) by inserting, immediately after the words “capital markets services licence”, the words “for any regulated activity other than fund management”; and
- (b) by renumbering the regulation as paragraph (1) of that regulation, and by inserting immediately thereafter the following paragraph:

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

**Amendment of regulation 13**

6. Regulation 13 of the principal Regulations is amended —

- (a) by deleting the word “and” at the end of paragraph (d); and
- (b) by deleting the full-stop at the end of paragraph (e) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(f) ensured effective controls and segregation of duties to mitigate potential conflicts of interest that may arise from the operations of the holder.”.

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**New regulations 13A and 13B**

7. The principal Regulations are amended by inserting, immediately after regulation 13, the following regulations:

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

**13A.**—(1) The holder of a capital markets services licence for fund management shall —

- (a) put in place a risk management framework that identifies, addresses and monitors the risks associated with assets under its management which is appropriate to the nature, scale and complexity of the assets;
- (b) subject assets under its management to independent valuation for the purpose of determining their respective net asset values, and ensure that a party independent of the holder conveys such values to the customers to which the assets relate or, if the assets are in the form of units in a closed-end fund or collective investment scheme, to the unitholders of the fund or scheme;
- (c) segregate assets under its management, other than assets which are already subject to regulation 17 or 27 (as the case may be), from the proprietary assets of the holder or the holder’s related corporations or connected persons, and maintain them in —
  - (i) a trust account with any financial institution referred to in regulation 17(1)(a) to (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,

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on behalf of its customers, over those made for any of the following persons:

- (i) the holder;
  - (ii) the holder's associated persons;
  - (iii) the holder's officers;
  - (iv) the holder's employees;
  - (v) the holder's representatives;
  - (vi) any person whom the holder knows to be an associated person of any person referred to in sub-paragraph (iii), (iv) or (v); and
- (e) mitigate conflicts of interest arising from the management of assets and where appropriate, disclose such conflicts of interest to the customer concerned.

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

(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).

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(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 exchange;
- (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**

**13B.** 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 also, 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 13A.”.

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**Amendment of regulation 14A**

8. Regulation 14A(2) of the principal Regulations is amended by deleting the words “a person who is exempted from holding a capital markets services licence under paragraph 4(1)(c), 5(1)(d) or 7(1)(b) of the Second Schedule” in sub-paragraph (b) and substituting the words “a Registered Fund Management Company or a person who is exempted from holding a capital markets services licence under paragraph 7(1)(b) of the Second Schedule”.

**New regulation 54A**

9. The principal Regulations are amended by inserting, immediately after regulation 54, the following regulation:

**“Registered Fund Management Companies**

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

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

**Amendment of regulation 55**

10. Regulation 55 of the principal Regulations is amended —

- (a) by inserting, immediately after the words “11A(2) or (3),”, “13A,”;
- (b) by deleting the words “paragraph 4(6), 5(7)” and substituting the words “paragraph 5(7A), (7G), (7I) or (7J)”;

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- (c) by inserting, immediately after the words “regulation 51”, the words “or paragraph 5(7H) of the Second Schedule”.

### **Deletion and substitution of regulation 56**

**11.** Regulation 56 of the principal Regulations is deleted and the following regulation substituted therefor:

**“Persons exempted from holding capital markets services licence under paragraph 5(1)(d) of Second Schedule in force before 7th August 2012**

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

- (a) until the expiry of a period of 6 months after that date;
- (b) if, before the expiry of the period of 6 months in paragraph (a), it applies for a capital markets services licence for fund management, until the date on which the licence is granted to it, the date it is notified by the Authority that its application has been refused, or the date the application is withdrawn; or
- (c) if, before the expiry of the period of 6 months in paragraph (a), it lodges with the Authority a notice of commencement of business as a Registered Fund Management Company pursuant to paragraph 5(7) of the Second Schedule, until the date the Authority publishes its registration as a Registered Fund Management Company on the Authority’s Internet website at <http://www.mas.gov.sg>, or the date it is notified by the Authority that the Authority has refused to register it as a Registered Fund Management Company.”.

### **Deletion of regulations 57 to 60**

**12.** Regulations 57 to 60 of the principal Regulations are deleted.

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**Amendment of Second Schedule**

**13.** The Second Schedule to the principal Regulations is amended —

(a) by inserting, immediately after the definition of “agent” in paragraph 1, the following definition:

“ “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) irredeemable and non-cumulative preference share capital; and

(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;”;

(b) by inserting, immediately after the definition of “market-maker” in paragraph 1, the following definition:

“ “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;”;

(c) by deleting the semi-colon at the end of paragraph 4(1)(b) and substituting a full-stop;

(d) by deleting sub-paragraph (c) of paragraph 4(1);

(e) by deleting the words “sub-paragraph (1)(a), (b) or (c)” in paragraph 4(2) and substituting the words “sub-paragraph (1)(a) or (b)”;

(f) by deleting the words “or (c)” in paragraph 4(3) and (4);

(g) by deleting sub-paragraphs (4A) to (8) of paragraph 4;

(h) by deleting sub-paragraph (d) of paragraph 5(1);

(i) by deleting the full-stop at the end of sub-paragraph (g) of paragraph 5(1) and substituting a semi-colon, and by inserting immediately thereafter the following sub-paragraphs:

“(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, immovable assets;



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- (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.”;
  - (j) by deleting sub-paragraph (a) of paragraph 5(2) and substituting the following sub-paragraph:
 

“(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) or (i), as the case may be;”;
  - (k) by deleting the words “sub-paragraph (1)(d)” wherever they appear in paragraph 5(2)(b), (bb) and (c) and substituting in each case the words “sub-paragraph (1)(i)”;
  - (l) by deleting the word “he” in paragraph 5(2)(bb)(i) and (iii) and substituting in each case the word “it”;
  - (m) by deleting sub-paragraph (ii) of paragraph 5(2)(bb) and substituting the following sub-paragraph:
 

“(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”;
  - (n) by deleting the words “sub-paragraph (1)(d)” in paragraph 5(3)(a)(iii)(A) and substituting the words “sub-paragraph (1)(i)”;
  - (o) by inserting, immediately after the words “accredited investors” in paragraph 5(3)(b)(i), the words “or institutional investors or both”;
  - (p) by inserting, immediately after the words “territory in which the offer or invitation is made” in paragraph 5(3)(b)(ii), the words “, or institutional investors or both”;
  - (q) by inserting, immediately after the words “territory in which the offer or invitation is made” in paragraph 5(3)(c), the words “, or institutional investors or both”;

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- (r) by deleting sub-paragraph (d) of paragraph 5(3) and substituting the following sub-paragraphs:

“(d) an institutional investor, other than a collective investment scheme;

(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;

(f) any other person that the Authority may, from time to time, by a guideline issued by the Authority, determine;”;

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

- (t) by deleting the words “sub-paragraph (1)(d)” in paragraph 5(6) and substituting the words “sub-paragraph (1)(i)”;

- (u) by deleting sub-paragraph (7) of paragraph 5 and substituting the following sub-paragraphs:

“(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.

(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.

(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 13A as applied to a Registered Fund Management Company under regulation 54A(1);

(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.

(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.

(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.

(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.

(7F) The total value of the managed assets of a Registered Fund Management Company shall not at any time exceed \$250 million.

(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.

(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.

(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 25A within one month after the end of each of its financial years.

(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.

(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.

(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.";

- (v) by deleting the words "sub-paragraph (1)(a), (d) or (e)" in paragraph 5(8) and substituting the words "sub-paragraph (1)(a), (e), (h) or (i)"; and
- (w) by deleting sub-paragraph (9) of paragraph 5.

### Amendment of Third Schedule

**14.** The Third Schedule to the principal Regulations is amended by inserting, immediately after item 8, the following item:

<i>No.</i>	<i>First column Provision of Act</i>	<i>Second column Matter</i>	<i>Third column Amount</i>	<i>Fourth column Manner and time of payment</i>
“9.	Section 99A(1)	Annual fee payable by a Registered Fund Management Company for the year of commencement of business	Amount derived from the formula: $\frac{B}{365} \times \$1,000$ where “B” is the number of days between the date of commencement of business and 31st December of the same year, both dates inclusive	Payment shall be made upon lodgment of the notice of commencement of business in Form 22A pursuant to paragraph 5(7) of the Second Schedule in the manner specified by the Authority in writing.
		Annual fee payable by a Registered Fund Management Company for any year following the year of commencement of business	\$1,000	Payment shall be made within 14 days of the end of each calendar year in the manner specified by the Authority in writing.”

[G.N. Nos. S 373/2005; S 404/2005; S 275/2008; S 374/2008; S 709/2010; S 418/2011; S 18/2012]

Made this 1st day of August 2012.

RAVI MENON  
Managing Director,  
Monetary Authority of Singapore.

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