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SECURITIES AND FUTURES ACT
(CHAPTER 289)

SECURITIES AND FUTURES
(LICENSING AND CONDUCT OF BUSINESS)
(AMENDMENT) REGULATIONS 2011

In exercise of the powers conferred by sections 123, 337 and 341 of the Securities and Futures Act, the Monetary Authority of Singapore hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2011 and shall come into operation on 31st August 2011.

Deletion and substitution of regulation 45

2. Regulation 45 of the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10) (referred to in these Regulations as the principal Regulations) is deleted and the following regulation substituted therefor:

“Securities borrowing and lending

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

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

(2) Paragraph (1)(a) shall not apply to a holder of a capital markets services licence when the holder borrows securities from an accredited investor.

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

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

(5) For the purposes of paragraph (4), the written agreement shall —

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

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

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

- (7) For the purposes of paragraph (6) —
- (a) the terms and conditions in the written agreement that apply to the borrowing of securities shall include the

details set out in paragraph (5), with the exception of paragraph (5)(f), and for this purpose —

- (i) any reference to the minimum Collateral in paragraph (5) shall be construed as a reference to any asset which may be provided to the accredited investor as collateral for the borrowing; and
 - (ii) any reference to the lender shall be construed as a reference to the accredited investor; and
- (b) where assets are provided to the accredited investor as collateral for the borrowing, the written agreement shall specify —
- (i) whether the securities borrowed and the assets provided comprising securities, if any, are marked to market; and
 - (ii) if so, the procedures for calculating the margins.
- (8) Without prejudice to paragraph (3), the holder of a capital markets services licence may —
- (a) where it borrows securities from a lender, provide assets other than Collateral (referred to in this regulation as additional assets) to the lender if the Collateral already provided to the lender is valued at not less than 100% of the market value of the securities borrowed as at the time the additional assets are provided to the lender; and
 - (b) where it lends securities to a borrower, obtain additional assets from the borrower if the Collateral already obtained from the borrower is valued at not less than 100% of the market value of the securities lent as at the time the additional assets are obtained from the borrower.
- (9) In this regulation —
- “Collateral” means —
- (a) cash;
 - (b) Government securities;
 - (c) marginable securities;
 - (d) guarantees issued by banks licensed under the Banking Act (Cap. 19);

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- (e) letters of credit;
 - (f) any asset that —
 - (i) is liquid and readily convertible into cash;
 - (ii) is in the possession or control of —
 - (A) the holder where the holder borrows securities from a lender; and
 - (B) the borrower where the holder lends securities to a borrower;
 - (iii) is subject to a legally binding agreement between the lender and the holder or the holder and the borrower, as the case may be, which —
 - (A) is evidenced in writing;
 - (B) is irrevocable and enforceable against —
 - (AA) the holder where the holder borrows securities from a lender; and
 - (BB) the borrower where the holder lends securities to a borrower; and
 - (C) confers an unconditional right to apply the asset, to sell the asset or to otherwise convert the asset into cash on —
 - (AA) the lender where the holder borrows securities from a lender; and
 - (BB) the holder where the holder lends securities to a borrower;
 - (iv) is not a security issued by —
 - (A) in the case where the holder borrows securities from a lender —
 - (AA) the holder, that gives rise to exposure to the holder; or
 - (BB) a related corporation of the holder; and

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- (B) in the case where the holder lends securities to a borrower —
- (AA) the borrower, that gives rise to exposure to the borrower; or
 - (BB) a related corporation of the borrower; and
- (v) is not a security that is prohibited from serving as collateral by any securities exchange, futures exchange or clearing house, as the case may be; or
- (g) such other instruments as the Authority may from time to time, by a guideline issued by the Authority, determine;

“customer” means —

- (a) a person on whose behalf the holder of a capital markets services licence carries on any regulated activity; or
- (b) any other person with whom the holder enters or will enter into transactions as principal for the sale or purchase of securities;

“marginable securities” means —

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

“market value”, in relation to securities listed for quotation or quoted on a securities exchange or overseas securities exchange, means —

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

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

Amendment of regulation 55

3. Regulation 55 of the principal Regulations is amended by deleting the words “45(1), (2), (3), (4) or (5),” and substituting the words “45(1), (3), (4), (5), (6) or (7).”.

Savings

4.—(1) Subject to paragraph (2), in respect of securities lending or borrowing agreements entered into by a holder of a capital markets services licence before 31st August 2011, regulation 45 of the principal Regulations in force immediately before that date shall continue to apply for a period of 6 months after that date in respect of such agreements, as if these Regulations had not been enacted.

(2) Regulation 45 of the principal Regulations in force on 31st August 2011 shall not apply to securities lending or borrowing agreements entered into by a holder of a capital markets services licence before 31st August 2011 if the agreements are completed before the expiration of the 6-month period referred to in paragraph (1).

Made this 19th day of July 2011.

RAVI MENON
Managing Director,
Monetary Authority of Singapore.

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