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## **No. S 621**

### **FINANCIAL ADVISERS ACT 2001**

#### **FINANCIAL ADVISERS (EXEMPTION FOR CROSS-BORDER ARRANGEMENTS) (FOREIGN OFFICES) (AMENDMENT NO. 2) REGULATIONS 2023**

In exercise of the powers conferred by section 130(1) of the Financial Advisers Act 2001, the Monetary Authority of Singapore makes the following Regulations:

#### **Citation and commencement**

1. These Regulations are the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Offices) (Amendment No. 2) Regulations 2023 and come into operation on 9 October 2023.

#### **Amendment of regulation 2**

2. In the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 (G.N. No. S 763/2021) (called in these Regulations the principal Regulations), in regulation 2(1), delete the definition of “accredited investor”.

#### **Amendment of regulation 8**

3. In the principal Regulations, in regulation 8(3), before the definition of “foreign office”, insert —

““accredited investor” means any of the following persons in relation to a counterparty, if the person has opted, under regulation 3(2) of the Securities and Futures (Classes of Investors) Regulations 2018 (G.N. No. S 665/2018), to be treated by the counterparty as an accredited investor for all the consent provisions:

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- (a) an individual mentioned in section 4A(1)(a)(i) of the Securities and Futures Act 2001;
  - (b) a corporation mentioned in section 4A(1)(a)(ii) of the Securities and Futures Act 2001;
  - (c) a trustee mentioned in section 4A(1)(a)(iii) of the Securities and Futures Act 2001;
  - (d) a person mentioned in section 4A(1)(a)(iv) of the Securities and Futures Act 2001;

“consent provision” and “counterparty” have the meanings given by regulation 3(9) of the Securities and Futures (Classes of Investors) Regulations 2018;”.

### **Saving provision for accredited investor with respect to licensed financial adviser**

4.—(1) A person (called in this regulation customer *A*) who was an accredited investor with respect to a licensed financial adviser (*B*) for the purposes of regulation 8(1)(d)(i) of the principal Regulations immediately before 9 October 2023 continues (despite regulations 2 and 3) to be an accredited investor with respect to *B* under that regulation on or after that date, if —

- (a) where *B* had provided any financial advisory service mentioned in paragraph 1 of the Second Schedule to the Act to customer *A* before 9 October 2023 in the course of carrying on the qualifying business in respect of which *B* was exempt under regulation 4(1) of those Regulations immediately before that date — the conditions in paragraph (2) are satisfied; or
- (b) where *B* had provided the financial advisory service mentioned in paragraph 3 of the Second Schedule to the Act to customer *A* before 9 October 2023 in the course of carrying on the qualifying business in respect of which *B* was exempt under regulation 4(1) of those Regulations immediately before that date — the conditions in paragraph (3) are satisfied.

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(2) For the purposes of paragraph (1)(a), the conditions are that, on or after 9 October 2023 —

(a) *B* provides any financial advisory service mentioned in paragraph 1 of the Second Schedule to the Act to customer *A* in the course of carrying on the qualifying business mentioned in that paragraph, where the provision of the financial advisory service is —

(i) under an agreement entered into between customer *A* and *B* before 9 October 2023; and

(ii) in respect of an investment product that *B* had previously advised customer *A* before that date; and

(b) apart from sub-paragraph (a), *B* does not provide any financial advisory service mentioned in paragraph 1 of the Second Schedule to the Act to customer *A* in the course of the qualifying business.

(3) For the purposes of paragraph (1)(b), the conditions are that, on or after 9 October 2023 —

(a) *B* provides the financial advisory service mentioned in paragraph 3 of the Second Schedule to the Act to customer *A* in the course of carrying on the qualifying business mentioned in that paragraph, where the provision of the financial advisory service is pursuant to an instruction given by customer *A* to *B* before 9 October 2023; and

(b) apart from sub-paragraph (a), *B* does not provide any financial advisory service mentioned in paragraph 3 of the Second Schedule to the Act to customer *A* in the course of the qualifying business.

(4) A person (called in this regulation customer *C*) who was an accredited investor with respect to *B* for the purposes of regulation 8(2)(b)(ii) of the principal Regulations immediately before 9 October 2023 continues (despite regulations 2 and 3) to be an accredited investor with respect to *B* under that regulation on or after that date, if —

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- (a) before 9 October 2023, *B* had provided the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act to customer *C* in the course of carrying on the qualifying business in respect of which *B* was exempt under regulation 4(4) of those Regulations immediately before that date; and
- (b) on or after 9 October 2023 —
- (i) *B* provides the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act to customer *C* in the course of carrying on the qualifying business, where the provision of the financial advisory service is —
- (A) under an agreement entered into between customer *C* and *B* before 9 October 2023; and
- (B) by issuing or promulgating a research analysis or research report that had been completed before that date; and
- (ii) apart from sub-paragraph (i), *B* does not provide any financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act to customer *C* in the course of the qualifying business.

(5) In this regulation, “qualifying business” has the meaning given by regulation 2(2) of the principal Regulations.

### **Saving provision for accredited investor with respect to specified exempt financial adviser**

5.—(1) A person (called in this regulation customer *D*) who was an accredited investor with respect to a specified exempt financial adviser (*E*) for the purposes of regulation 8(1)(d)(i) of the principal Regulations immediately before 9 October 2023 continues (despite regulations 2 and 3) to be an accredited investor with respect to *E* under that regulation on or after that date, if —

- (a) where *E* had provided any financial advisory service mentioned in paragraph 1 of the Second Schedule to the Act to customer *D* before 9 October 2023 in the course of

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carrying on the qualifying business in respect of which *E* was exempt under regulation 6(2) or 7(1) of those Regulations immediately before that date — the conditions in paragraph (2) are satisfied; or

- (b) where *E* had provided the financial advisory service mentioned in paragraph 3 of the Second Schedule to the Act to customer *D* before 9 October 2023 in the course of carrying on the qualifying business in respect of which *E* was exempt under regulation 6(2) or 7(1) of those Regulations immediately before that date — the conditions in paragraph (3) are satisfied.

(2) For the purposes of paragraph (1)(a), the conditions are that, on or after 9 October 2023 —

- (a) *E* provides any financial advisory service mentioned in paragraph 1 of the Second Schedule to the Act to customer *D* in the course of carrying on the qualifying business mentioned in that paragraph, where the provision of the financial advisory service is —

(i) under an agreement entered into between customer *D* and *E* before 9 October 2023; and

(ii) in respect of an investment product that *E* had previously advised customer *D* before that date; and

- (b) apart from sub-paragraph (a), *E* does not provide any financial advisory service mentioned in paragraph 1 of the Second Schedule to the Act to customer *D* in the course of the qualifying business.

(3) For the purposes of paragraph (1)(b), the conditions are that, on or after 9 October 2023 —

- (a) *E* provides the financial advisory service mentioned in paragraph 3 of the Second Schedule to the Act to customer *D* in the course of carrying on the qualifying business mentioned in that paragraph, where the provision of the financial advisory service is pursuant to an instruction given by customer *D* to *E* before 9 October 2023; and

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- (b) apart from sub-paragraph (a), *E* does not provide any financial advisory service mentioned in paragraph 3 of the Second Schedule to the Act to customer *D* in the course of the qualifying business.

(4) A person (called in this regulation customer *F*) who was an accredited investor with respect to *E* for the purposes of regulation 8(2)(b)(ii) of the principal Regulations immediately before 9 October 2023 continues (despite regulations 2 and 3) to be an accredited investor with respect to *E* under that regulation on or after that date, if —

- (a) before 9 October 2023, *E* had provided the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act to customer *F* in the course of carrying on the qualifying business in respect of which *E* was exempt under regulation 6(6) of those Regulations immediately before that date; and

- (b) on or after 9 October 2023 —

- (i) *E* provides the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act to customer *F* in the course of carrying on the qualifying business, where the provision of the financial advisory service is —

(A) under an agreement entered into between customer *F* and *E* before 9 October 2023; and

(B) by issuing or promulgating a research analysis or research report that had been completed before that date; and

- (ii) apart from sub-paragraph (i), *E* does not provide any financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act to customer *F* in the course of the qualifying business.

(5) In this regulation —

“specified exempt financial adviser” has the meaning given by regulation 2(1) of the principal Regulations;

“qualifying business” has the meaning given by regulation 2(2) of the principal Regulations.

*[G.N. No. S 223/2023]*

Made on 7 September 2023.

RAVI MENON  
*Managing Director,*  
*Monetary Authority of Singapore.*

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