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FINANCIAL ADVISERS ACT
(CHAPTER 110)

FINANCIAL ADVISERS
(EXEMPTION FOR CROSS-BORDER ARRANGEMENTS)
(FOREIGN OFFICES) REGULATIONS 2021

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In exercise of the powers conferred by section 100(1) of the Financial Advisers Act, 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) Regulations 2021 and come into operation on 9 October 2021.

Definitions

2.—(1) In these Regulations, unless the context otherwise requires —

“accredited investor” has the meaning given by section 4A(1)(a) of the Securities and Futures Act 2001;

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“AML/CFT requirement” or “Anti-Money Laundering/Countering the Financing of Terrorism requirement”, in relation to a foreign jurisdiction, means a law or regulatory requirement of that foreign jurisdiction for the detection or prevention of money laundering or the financing of terrorism;

“cross-border arrangement” means an arrangement implemented by a licensed financial adviser or specified exempt financial adviser under which the licensed financial adviser or specified exempt financial adviser (as the case may be) carries on (through a foreign office) a qualifying business;

“derivatives contract” has the same meaning as in section 2(1) of the Securities and Futures Act 2001;

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“exchange-traded derivatives contract” has the meaning given by section 2(1) of the Securities and Futures Act 2001;

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“expert investor” has the meaning given by section 4A(1)(b) of the Securities and Futures Act 2001;

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“FATF” means the intergovernmental body known as the Financial Action Task Force;

“foreign exchange OTC derivatives contract” means an OTC derivatives contract entered into on a margin basis the value of which is determined by reference to, is derived from, or varies by reference to —

- (a) the value or amount of any currency or currency index; or
- (b) fluctuations in the values or amounts of any currency or currency index;

“foreign jurisdiction” means a country or jurisdiction other than Singapore;

“foreign office”, in relation to a licensed financial adviser or specified exempt financial adviser, means an office (including the head office) or a branch of the licensed financial adviser or specified exempt financial adviser (as the case may be) that is established outside Singapore;

“foreign regulatory authority” means —

- (a) an authority of a foreign jurisdiction, exercising any function that corresponds to a regulatory function of the Authority under the Monetary Authority of Singapore Act 1970; or

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- (b) a non-governmental organisation exercising any function that corresponds to a regulatory function of the Authority under the Monetary Authority of Singapore Act 1970 under the law of, or by delegation from an authority of, a foreign jurisdiction;

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“foreign representative”, in relation to a licensed financial adviser or specified exempt financial adviser, means a representative of the licensed financial adviser or specified exempt financial adviser (as the case may be), who —

- (a) is ordinarily resident outside Singapore;
- (b) is not an appointed representative or a provisional representative of the licensed financial adviser or

specified exempt financial adviser, as the case may be; and

- (c) performs on behalf of a foreign office of the licensed financial adviser or specified exempt financial adviser (as the case may be) any financial advisory service in respect of which the licensed financial adviser or specified exempt financial adviser (as the case may be) is carrying on (through the foreign office) a qualifying business under a cross-border arrangement;

“institutional investor” has the meaning given by section 4A(1)(c) of the Securities and Futures Act 2001;

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“on a margin basis”, in relation to a contract, means the entering of a contract by 2 parties where one party provides to the other party (whether directly or indirectly through such party’s agent) money, securities, property or other collateral which represents only a part of the value of the contract;

“over-the-counter derivatives contract” or “OTC derivatives contract” means a derivatives contract other than an exchange-traded derivatives contract;

“specified exempt financial adviser” means an exempt financial adviser mentioned in section 20(1)(a), (b), (c), (d) or (e) of the Act;

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“specified investment product” means —

- (a) any specified OTC derivatives contract;
- (b) any foreign exchange OTC derivatives contract arranged by —
- (i) any bank that holds a licence granted under section 7 or 79 of the Banking Act 1970; or
- (ii) any merchant bank that holds a merchant bank licence, or is treated as having been granted a

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merchant bank licence, under the Banking Act 1970; or

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(c) any spot foreign exchange contract for the purposes of leveraged foreign exchange trading arranged by —

(i) any bank that holds a licence granted under section 7 or 79 of the Banking Act 1970; or

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(ii) any merchant bank that holds a merchant bank licence, or is treated as having been granted a merchant bank licence, under the Banking Act 1970;

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“specified OTC derivatives contract” means an OTC derivatives contract the value of which is determined by reference to, is derived from, or varies by reference to —

(a) the value or amount of any item other than any —

(i) securities;

(ii) securities index;

(iii) currency; or

(iv) currency index; or

(b) fluctuations in the values or amounts of one or more items other than any —

(i) securities;

(ii) securities index;

(iii) currency; or

(iv) currency index;

“spot foreign exchange contract” has the meaning given by section 2(1) of the Securities and Futures Act 2001.

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- (2) For the purposes of these Regulations, “qualifying business” —
- (a) in relation to a licensed financial adviser — means a business of providing any financial advisory service in respect of one or more types of investment products authorised by the financial adviser’s licence; or
 - (b) in relation to a specified exempt financial adviser — means a business of providing any financial advisory service in respect of one or more types of investment products, where the specified exempt financial adviser has, in respect of that financial advisory service —
 - (i) lodged with the Authority a notice under regulation 37(1)(b) or (ba) of the Financial Advisers Regulations (Rg 2); and
 - (ii) not lodged with the Authority a notice under regulation 37(1)(d) of those Regulations.

Forms

3.—(1) Form FN, which is to be used for the purposes of these Regulations, is set out on the Authority’s Internet website at <http://www.mas.gov.sg>, and any reference in these Regulations to Form FN is a reference to the current version of the form bearing the corresponding letters which is displayed on that website.

(2) Any document required to be lodged with the Authority under these Regulations must be lodged in the relevant form and in the manner specified in the website mentioned in paragraph (1), or in such other manner as the Authority may specify from time to time.

(3) Any form used for the purposes of these Regulations must be completed in the English language and in accordance with such directions as may be specified in the form or by the Authority.

(4) The Authority may refuse to accept any form if it is not completed or lodged in accordance with this regulation.

(5) Where strict compliance with any form is not possible, the Authority may allow for the necessary modifications to be made to that form, or for the requirements of that form to be complied with in such other manner as the Authority thinks fit.

Exemption for licensed financial advisers carrying on qualifying businesses through foreign offices under cross-border arrangements, and their foreign representatives

4.—(1) Where all the circumstances mentioned in regulation 8(1) are present and the qualifying business of a licensed financial adviser that is carried on by its foreign office under a cross-border arrangement consists of providing any financial advisory service (other than the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act), the licensed financial adviser is —

(a) exempt from the following provisions in respect of that financial advisory service:

(i) sections 19, 22(5), 34 to 38, 41, 42, 43 and 45 of the Act;

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(ii) regulations 18B, 20, 21, 22 and 22D of the Financial Advisers Regulations;

(b) exempt from sections 47 and 48(3)(a) of the Act in respect of any foreign representative who performs that financial advisory service on behalf of the licensed financial adviser; and

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(c) exempt from section 47 of the Act in respect of any supervisor of any foreign representative mentioned in sub-paragraph (b).

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(2) A licensed financial adviser exempt under paragraph (1) must lodge with the Authority a notice setting out the details of the cross-border arrangement in Form FN —

(a) where the licensed financial adviser had carried on the qualifying business mentioned in paragraph (1) immediately before 9 October 2021 — by the 14th day after the day on which the licensed financial adviser ceases to comply with any of the provisions mentioned in paragraph (1)(a), (b) or (c) (as the case may be) in reliance on the exemption mentioned in that paragraph; or

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- (b) where the licensed financial adviser commences the qualifying business mentioned in paragraph (1) on or after 9 October 2021 — by the 14th day after the day on which the qualifying business commences.
- (3) A licensed financial adviser ceases to be exempt under paragraph (1) —
- (a) in the case where the licensed financial adviser fails to lodge with the Authority a notice setting out the details of the cross-border arrangement in accordance with paragraph (2) — on the day immediately after the day mentioned in paragraph (2)(a) or (b), as the case may be; or
- (b) in any other case — on the day on which any of the circumstances mentioned in regulation 8(1) ceases to be present.
- (4) Where all the circumstances mentioned in regulation 8(2) are present and the qualifying business of a licensed financial adviser that is carried on by its foreign office under a cross-border arrangement consists of providing the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act, the licensed financial adviser is —
- (a) exempt from the following provisions in respect of that financial advisory service:
- (i) sections 19, 22(5), 34 to 38 and 45 of the Act;
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- (ii) regulations 18B, 21, 22 and 22D of the Financial Advisers Regulations;
- (b) exempt from sections 47 and 48(3)(a) of the Act in respect of any foreign representative who performs that financial advisory service on behalf of the licensed financial adviser; and
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- (c) exempt from section 47 of the Act in respect of any supervisor of any foreign representative mentioned in sub-paragraph (b).
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(5) A licensed financial adviser ceases to be exempt under paragraph (4) on the day on which any of the circumstances mentioned in regulation 8(2) ceases to be present.

(6) A foreign representative of a licensed financial adviser exempt under paragraph (1) or (4), when acting as a representative of the licensed financial adviser in respect of the financial advisory service that is the subject of an exemption under that paragraph, is exempt from —

(a) sections 19 and 22(1) and (2) of the Act; and

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(b) regulation 21(3) of the Financial Advisers Regulations.

Exemption for licensed financial advisers previously carrying on qualifying businesses providing certain financial advisory services in respect of specified OTC derivatives contracts through foreign offices under cross-border arrangements, and their foreign representatives

5.—(1) Despite regulation 4, paragraph (2) applies to a licensed financial adviser where —

(a) immediately before 9 October 2021, the licensed financial adviser —

(i) was carrying on a business of providing any financial advisory service (other than the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act) in respect of any specified OTC derivatives contract —

(A) through a foreign office under an arrangement implemented by the licensed financial adviser; and

(B) in reliance on the exemption under regulation 40BB of the Financial Advisers Regulations; and

(ii) had applied to the Authority under section 16(1) of the Act to vary its licence by adding —

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- (A) the financial advisory service in respect of OTC derivatives contracts as a financial advisory service that the licensed financial adviser is authorised to provide under its licence; or
- (B) OTC derivatives contracts as a type of investment product in respect of which the licensed financial adviser may provide the financial advisory service; and
- (b) the Authority approves the application on a date (called in this regulation the date of approval) that is on or after 9 October 2021.
- (2) The licensed financial adviser mentioned in paragraph (1) is, on or after the date of approval —
- (a) exempt from the following provisions in respect of the financial advisory service mentioned in paragraph (1)(a)(i):
- (i) sections 22A, 23B(3), 25 to 29 and 36 of the Act;
 - (ii) regulations 18B, 21, 22 and 22D of the Financial Advisers Regulations;
- (b) exempt from sections 38 and 39(3)(a) of the Act in respect of any foreign representative who performs that financial advisory service on behalf of the licensed financial adviser; and
- (c) exempt from section 38 of the Act in respect of any supervisor of any foreign representative mentioned in sub-paragraph (b).
- (3) A licensed financial adviser mentioned in paragraph (1) and exempt under paragraph (2) must lodge with the Authority a notice setting out the details of the arrangement mentioned in paragraph (1)(a)(i)(A) in Form FN by 8 October 2022.
- (4) A licensed financial adviser ceases to be exempt under paragraph (2) —

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- (a) in the case where the licensed financial adviser fails to lodge with the Authority a notice setting out the details of the arrangement mentioned in paragraph (1)(a)(i)(A) in accordance with paragraph (3) — on 9 October 2022; or
 - (b) in any other case —
 - (i) where any of the circumstances mentioned in regulation 8(1) is not present on the day of the lodgment of the notice — on that day; or
 - (ii) where any of the circumstances mentioned in regulation 8(1) ceases to be present after the day of the lodgment of the notice — on the day on which the circumstances cease to be present.

(5) A foreign representative of a licensed financial adviser exempt under paragraph (2), when acting as a representative of the licensed financial adviser in respect of the financial advisory service that is the subject of an exemption under that paragraph, is exempt from —

- (a) sections 22A and 23B(1) and (1A) of the Act; and
- (b) regulation 21(3) of the Financial Advisers Regulations.

Exemption for specified exempt financial advisers carrying on qualifying business through foreign offices under cross-border arrangements, and their foreign representatives

6.—(1) Paragraph (2) applies to a specified exempt financial adviser where —

- (a) all the circumstances mentioned in regulation 8(1) are present; and
- (b) the qualifying business of the specified exempt financial adviser that is carried on by its foreign office under a cross-border arrangement consists of providing any financial advisory service (other than the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act).

(2) The specified exempt financial adviser mentioned in paragraph (1) is —

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- (a) exempt from the following provisions in respect of the financial advisory service mentioned in paragraph (1)(b):
- (i) sections 19 and 22(5) and sections 34 to 38, 41, 42, 43 and 45 (read with section 20(2)) of the Act;
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 - (ii) regulations 18B, 20, 21, 22 and 22D of the Financial Advisers Regulations;
- (b) exempt from sections 47 and 48(3)(a) (read with section 20(2)) of the Act in respect of any foreign representative who performs that financial advisory service on behalf of the specified exempt financial adviser; and
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- (c) exempt from section 47 (read with section 20(2)) of the Act in respect of any supervisor of any foreign representative mentioned in sub-paragraph (b).
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- (3) A specified exempt financial adviser mentioned in paragraph (1) and exempt under paragraph (2) must lodge with the Authority a notice setting out the details of the cross-border arrangement in Form FN —
- (a) where the specified exempt financial adviser had carried on the qualifying business mentioned in paragraph (1)(b) immediately before 9 October 2021 — by the 14th day after the day on which the specified exempt financial adviser ceases to comply with any of the provisions mentioned in paragraph (2)(a), (b) or (c) (as the case may be) in reliance on the exemption mentioned in that paragraph; or
 - (b) where the specified exempt financial adviser commences the qualifying business mentioned in paragraph (1)(b) on or after 9 October 2021 — by the 14th day after the day on which the qualifying business commences.
- (4) A specified exempt financial adviser ceases to be exempt under paragraph (2) —

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- (a) in the case where the specified exempt financial adviser fails to lodge with the Authority a notice setting out the details of the cross-border arrangement in accordance with paragraph (3) — on the day immediately after the day mentioned in paragraph (3)(a) or (b), as the case may be; or
- (b) in any other case — on the day on which any of the circumstances mentioned in regulation 8(1) ceases to be present.
- (5) Paragraph (6) applies to a specified exempt financial adviser where —
- (a) all the circumstances mentioned in regulation 8(2) are present; and
- (b) the qualifying business of a specified exempt financial adviser that is carried on by its foreign office under a cross-border arrangement consists of providing the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act.
- (6) The specified exempt financial adviser mentioned in paragraph (5) is —
- (a) exempt from the following provisions in respect of the financial advisory service mentioned in paragraph (5)(b):
- (i) sections 19 and 22(5) and sections 34 to 38 and 45 (read with section 20(2)) of the Act;
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- (ii) regulations 18B, 21, 22 and 22D of the Financial Advisers Regulations;
- (b) exempt from sections 47 and 48(3)(a) (read with section 20(2)) of the Act in respect of any foreign representative who performs that financial advisory service on behalf of the specified exempt financial adviser; and
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- (c) exempt from section 47 (read with section 20(2)) of the Act in respect of any supervisor of any foreign representative mentioned in sub-paragraph (b).

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(7) A specified exempt financial adviser ceases to be exempt under paragraph (6) on the day on which any of the circumstances mentioned in regulation 8(2) ceases to be present.

(8) A foreign representative of a specified exempt financial adviser exempt under paragraph (2) or (6), when acting as a representative of the specified exempt financial adviser in respect of the financial advisory service that is the subject of an exemption under that paragraph, is exempt from —

- (a) sections 19 and 22(1) and (2) of the Act; and

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- (b) regulation 21(3) of the Financial Advisers Regulations.

Exemption for certain specified exempt financial advisers previously carrying on qualifying businesses providing certain financial advisory services in respect of specified investment products through foreign offices under cross-border arrangements, and their foreign representatives

7.—(1) Despite regulation 6, a specified exempt financial adviser who was, immediately before 9 October 2021, carrying on a qualifying business of providing any financial advisory service (other than the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act) in respect of a specified investment product through a foreign office under a cross-border arrangement in reliance on the exemption under regulation 40BC of the Financial Advisers Regulations is, on or after that date —

- (a) exempt from the following provisions in respect of that financial advisory service:

- (i) sections 19 and 22(5) and sections 34 to 38 and 45 (read with section 20(2)) of the Act;

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- (ii) regulations 18B, 21, 22 and 22D of the Financial Advisers Regulations;

- (b) exempt from sections 47 and 48(3)(a) (read with section 20(2)) of the Act in respect of any foreign representative who performs that financial advisory service on behalf of the specified exempt financial adviser; and

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- (c) exempt from section 47 (read with section 20(2)) of the Act in respect of any supervisor of any foreign representative mentioned in sub-paragraph (b).

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(2) A specified exempt financial adviser exempt under paragraph (1) must lodge with the Authority a notice setting out the details of the cross-border arrangement in Form FN by 8 October 2022.

(3) A specified exempt financial adviser ceases to be exempt under paragraph (1) —

- (a) in the case where the specified exempt financial adviser fails to lodge with the Authority a notice setting out the details of the cross-border arrangement in accordance with paragraph (2) — on 9 October 2022; or

(b) in any other case —

- (i) where any of the circumstances mentioned in regulation 8(1) is not present on the day of the lodgment of the notice — on that day; or
- (ii) where any of the circumstances mentioned in regulation 8(1) ceases to be present after the day of the lodgment of the notice — on the day on which the circumstances cease to be present.

(4) A foreign representative of a specified exempt financial adviser exempt under paragraph (1), when acting as a representative of the specified exempt financial adviser in respect of the financial advisory service that is the subject of an exemption under that paragraph, is exempt from —

- (a) sections 19 and 22(1) and (2) of the Act; and

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(b) regulation 21(3) of the Financial Advisers Regulations.

Circumstances for exemption

8.—(1) For the purposes of regulations 4(1) and (3)(b), 5(4)(b), 6(1)(a) and (4)(b) and 7(3)(b), the circumstances are —

- (a) the licensed financial adviser or specified exempt financial adviser (as the case may be) (called in this regulation *A*) is subject to regulatory oversight, in respect of any activity that is carried out by the foreign office, by a foreign regulatory authority in the foreign jurisdiction where the foreign office is established;
- (b) *A* is subject to AML/CFT requirements of the foreign jurisdiction mentioned in sub-paragraph (a) that are consistent with the standards set by the FATF and supervised by a foreign regulatory authority in that foreign jurisdiction as to whether *A* complies with the AML/CFT requirements;
- (c) both *A* and the foreign jurisdiction mentioned in sub-paragraph (a) are not subject to any sanction imposed pursuant to a Resolution of the Security Council of the United Nations; and
- (d) every customer of *A* to whom the specified financial advisory service is provided —
 - (i) is an accredited investor, institutional investor or expert investor; and
 - (ii) either —
 - (A) belongs to a class of persons that the Authority has specified under any condition or restriction imposed under section 10(2) or 20(9) of the Act (as the case may be) as being a class of persons to whom *A* may provide the specified financial advisory service; or
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 - (B) does not belong to a class of persons that the Authority has specified under any condition or

restriction imposed under section 10(2) or 20(9) of the Act (as the case may be) as being a class of persons to whom *A* may not provide the specified financial advisory service.

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(2) For the purposes of regulations 4(4) and (5) and 6(5)(a) and (7) the circumstances are —

- (a) the licensed financial adviser or specified exempt financial adviser (as the case may be) (called in this regulation *B*) is subject to regulatory oversight, in respect of any activity that is carried out by the foreign office, by a foreign regulatory authority in the foreign jurisdiction where the foreign office is established; and
- (b) *B* has implemented policies and procedures to ensure that in the course of providing the financial advisory service mentioned in regulation 4(4) or 6(5)(b) (as the case may be) through the foreign office under the cross-border arrangement, every research analysis or research report rendered by *B* (through the foreign office) contains —
 - (i) a statement to the effect that the recipient of the analysis or report is to contact a representative of *B* who is located in Singapore in respect of any matters arising from, or in connection with, the analysis or report; and
 - (ii) a statement to the effect that *B* accepts legal responsibility for the contents of the analysis or report without any disclaimer limiting or otherwise curtailing such legal responsibility unless the analysis or report is issued or promulgated to a person who is an accredited investor, expert investor or institutional investor.

(3) In this regulation —

“foreign office” means the foreign office mentioned in regulation 4(1) or (4), 5(1), 6(1) or (5) or 7(1), as the case may be;

“specified financial advisory service” means the financial advisory service in respect of which *A* is exempt under regulation 4(1), 5(2), 6(2) or 7(1), as the case may be.

Made on 6 October 2021.

RAVI MENON
Managing Director,
Monetary Authority of Singapore.

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