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MONETARY AUTHORITY OF SINGAPORE ACT (CHAPTER 186)

MONETARY AUTHORITY OF SINGAPORE (SAFEGUARDS FOR COMPULSORY TRANSFER OF BUSINESS, AND EXEMPTION FROM MORATORIUM PROVISIONS) REGULATIONS 2018

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In exercise of the powers conferred by section 30AAZN of the Monetary Authority of Singapore Act, the Deputy Prime Minister and Coordinating Minister for Economic and Social Policies, Prime Minister’s Office, Mr Tharman Shanmugaratnam, who is charged with the responsibility for the portfolio of the Prime Minister as regards the Monetary Authority of Singapore, makes the following Regulations:

Citation and commencement

1. These Regulations are the Monetary Authority of Singapore (Safeguards for Compulsory Transfer of Business, and Exemption

from Moratorium Provisions) Regulations 2018 and come into operation on 30 March 2018.

General definitions

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

“business rules”, in relation to a market infrastructure, means the rules, regulations, by-laws or such similar body of statements, by whatever name called, that govern the activities and conduct of —

(a) the market infrastructure; and

(b) other persons in relation to it,

whether or not those rules, regulations, by-laws or similar body of statements are made by the market infrastructure or are contained in its constituent documents;

“designated system” has the meaning given by section 2(1) of the Payment and Settlement Systems (Finality and Netting) Act (Cap. 231);

“designated system rules” means rules, regulations, by-laws or such similar body of written statements (by whatever name called) of a designated system, whether or not contained in the constituent documents of the designated system, that govern the activities and conduct of —

(a) the designated system; and

(b) any other persons in relation to the designated system;

“market infrastructure” means a pertinent financial institution that performs the functions of a market, a central clearing counterparty, a trade repository, a central securities depository, or a securities settlement system;

“title transfer arrangement” means an arrangement under which a person transfers assets to another person on terms providing for the other person to transfer those assets back to the first person if specified obligations are discharged;

“transfer order” has the meaning given by section 2(1) of the Payment and Settlement Systems (Finality and Netting) Act;

“transferor” has the meaning given by section 30AAR of the Act.

Meaning of “financial contract”

3.—(1) In these Regulations, “financial contract” means —

- (a) a securities contract;
- (b) a derivatives contract;
- (c) a securities lending or repurchase agreement; or
- (d) a spot contract.

(2) In this regulation —

“business trust” has the meaning given by section 2 of the Business Trusts Act (Cap. 31A);

“collective investment scheme” has the meaning given by section 2(1) of the Securities and Futures Act (Cap. 289);

“commodity” means —

- (a) any produce, item, goods or article; or
- (b) any index, right or interest in any produce, item, goods or article;

“derivatives contract” means any contract or arrangement under which —

- (a) a party to the contract or arrangement is required to, or may be required to, discharge all or any of its obligations under the contract or arrangement at some future time; and
- (b) the value of the contract or arrangement is determined (whether directly or indirectly, or whether wholly or in part) by reference to, is derived from, or varies by reference to, either of the following:
 - (i) the value or amount of one or more underlying things;

(ii) fluctuations in the values or amounts of one or more underlying things,

but does not include —

- (c) securities;
- (d) a deposit as defined in section 4B of the Banking Act (Cap. 19), where the deposit is accepted by a bank licensed under that Act or a merchant bank approved as a financial institution under the Act;
- (e) a deposit as defined in section 2 of the Finance Companies Act (Cap. 108), where the deposit is accepted by a finance company as defined in that section of that Act; or
- (f) any contract of insurance in relation to any class of insurance business specified in section 2(1) of the Insurance Act (Cap. 142);

“financial instrument” has the meaning given by section 2(1) of the Securities and Futures Act;

“securities” means —

- (a) shares, units in a business trust, units in a collective investment scheme or any instrument conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership; or
- (b) debentures,

but does not include —

- (c) any bill of exchange; or
- (d) any certificate of deposit issued by a bank or finance company whether situated in Singapore or elsewhere;

“securities contract” means a contract for or with a view to acquiring, disposing of, subscribing for, or underwriting securities;

“securities lending or repurchase agreement” means an agreement under which —

- (a) a person (called in this definition the transferor) transfers the legal interest in any certificates of deposit, banker’s acceptances or securities (called in this definition the transferred securities) to another person (called in this definition the transferee);
- (b) the transferor re-acquires the transferred securities or acquires equivalent certificates of deposit, banker’s acceptances or securities from the transferee —
 - (i) at a later time not later than one year after the date of the transfer mentioned in paragraph (a);
or
 - (ii) on demand;
- (c) the transferor retains the risk of loss or opportunity for gain in respect of the transferred securities;
- (d) the transferor does not dispose of (by transfer, declaration of trust or otherwise) the right to receive any part of the total consideration payable or to be given by the transferee under the agreement; and
- (e) if any distribution is made in respect of the transferred securities during the period between the date of the transfer mentioned in paragraph (a) and the date of the re-acquisition mentioned in paragraph (b), the transferor receives from the transferee the distribution or compensatory payment equal to the value of the distribution;

“spot contract” means a contract or an arrangement for the sale or purchase of any currency or commodity at the spot price, where it is intended for a party to the contract or arrangement to take delivery of the currency or commodity immediately or within a period which must not be longer than the period determined by the market convention for delivery of the foreign currency or commodity;

“underlying thing” means —

- (a) a unit in a collective investment scheme;
- (b) a commodity;
- (c) a financial instrument;
- (d) the price of transporting goods as freight or of hiring vessels for the purpose of transporting goods;
- (e) the credit of any person;
- (f) a numerical indicator, model or statistic relating to weather;
- (g) a numerical indicator, model or statistic relating to the emission of pollutants;
- (h) real property; or
- (i) a numerical indicator, model or statistic that is a measure of economic performance or economic conditions;

“unit” has the meaning given by section 2(1) of the Securities and Futures Act.

Meaning of “clearing and settlement arrangement of market infrastructure”

4.—(1) In these Regulations, “clearing and settlement arrangement”, in relation to a market infrastructure, means any of the following that is governed by the business rules of the market infrastructure:

- (a) a market contract;
- (b) the business rules of the market infrastructure relating to the settlement of a market contract;
- (c) any proceedings or other actions taken under the business rules;
- (d) a market charge;
- (e) the provision of market collateral;

- (f) the default rules of the market infrastructure;
- (g) any default proceedings.

(2) In paragraph (1), the terms “default proceedings”, “default rules”, “market charge”, “market collateral” and “market contract” have the definitions given to those terms in section 48(1) of the Securities and Futures Act (Cap. 289), with the reference in each definition to an approved clearing house or recognised clearing house substituted with a reference to a market infrastructure.

Set-off and netting rights

5.—(1) A transfer of part (but not the whole) of the business of a transferor under section 30AAS of the Act must not provide for the transfer of some, but not all, of the protected rights and liabilities between a particular person (*P*) and the transferor.

(2) In this regulation, rights and liabilities between *P* and the transferor are protected if —

- (a) they are rights and liabilities that arise from one or more financial contracts between them; and
 - (b) they are rights and liabilities which either *P* or the transferor is entitled to set-off or net under a set-off arrangement, netting arrangement or title transfer arrangement.
- (3) For the purposes of paragraph (2), it is immaterial whether —
- (a) the set-off arrangement or netting arrangement also permits *P* or the transferor to set-off or net rights and liabilities with another person; or
 - (b) the right to set-off or net is exercisable only on the occurrence of a particular event.

Rights and liabilities connected with clearing and settlement arrangement of market infrastructure

6.—(1) A transfer of part (but not the whole) of the business of a transferor under section 30AAS of the Act must not provide for the transfer of some, but not all, of the rights and liabilities of the transferor that arise from a clearing and settlement arrangement of a

market infrastructure, if the failure to transfer any such right or liability will result in a disruption of the arrangement.

(2) Without limiting the circumstances that constitute a disruption of the clearing and settlement arrangement of a market infrastructure, a disruption of any of the following is considered such a disruption under paragraph (1):

- (a) the discharge of payment and delivery obligations in respect of transactions cleared and settled through the market infrastructure;
- (b) the operation of the business rules of the market infrastructure relating to settlement finality;
- (c) the operation of the business rules of the market infrastructure regarding processes to be observed on the default of a participant.

Rights and liabilities connected with designated system

7.—(1) This regulation applies where —

- (a) a right or liability arising from a transfer order effected through a designated system has yet to be settled by the transferor; and
- (b) a failure to transfer the right or liability when transferring a part of the transferor's business is likely to result in a disruption of the operation of the designated system.

(2) The transfer of part (but not the whole) of the business of the transferor under section 30AAS of the Act —

- (a) must not take effect until after the right or liability is settled; or
- (b) must include the transfer of —
 - (i) the right or liability; and
 - (ii) any security posted by the transferor in accordance with the designated system rules.

(3) Without limiting the circumstances that constitute a disruption of the operation of a designated system, either of the following is considered a disruption of the designated system in paragraph (1):

- (a) a disruption of the netting or settlement (in accordance with the designated system rules) of a transfer order that is effected through the designated system;
- (b) a disruption of any process to be observed under the designated system rules, upon a default of a participant of the designated system.

Secured liabilities

8.—(1) This regulation applies where, under a contract to which the transferor is a party, one party owes to the other a liability that is secured against any property or rights.

(2) A transfer of part (but not the whole) of the business of the transferor under section 30AAS of the Act must not provide for —

- (a) the transfer of the liability without the benefit of the security;
 - (b) the transfer of the benefit of the security without the liability; or
 - (c) the transfer of the property or rights without the liability and benefit of the security.
- (3) For the purposes of paragraph (1), it is immaterial —
- (a) whether or not the liability is secured against all, or substantially all, of the properties and rights of the transferor;
 - (b) whether or not the liability is secured against specified properties or rights; and
 - (c) whether or not the property or rights against which the liability is secured is or are owned by the person who owes the liability.

Exemption from moratorium provisions of Act

9. Sections 30AAU(2), 30AAX(13) and 30AAZA(13) of the Act do not apply to a market infrastructure, or the operator of a designated system, when enforcing any security held by it in accordance with the margin rules or default arrangements of the market infrastructure or designated system.

Made on 12 March 2018.

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Singapore.*

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(To be presented to Parliament under section 30AAZN(5) of the Monetary Authority of Singapore Act).