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SECURITIES AND FUTURES ACT
(CHAPTER 289)

SECURITIES AND FUTURES
(EXEMPTION FOR CROSS-BORDER ARRANGEMENTS)
(FOREIGN OFFICES) REGULATIONS 2021

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In exercise of the powers conferred by section 337(1) of the Securities and Futures Act, the Monetary Authority of Singapore makes the following Regulations:

Citation and commencement

1. These Regulations are the Securities and Futures (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 —

“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;

“block futures contract” means a futures contract which is —

- (a) privately negotiated between 2 parties in accordance with the business rules or practices of an organised market; and
- (b) entered into between those 2 parties in accordance with the business rules or practices of that organised market;

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

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

“foreign exchange OTC derivatives contract” means an OTC derivatives contract —

- (a) which is entered into by one party providing to the other party money, securities, property or other collateral which represents only a part of the value of the contract; and

(b) the value of which is determined by reference to, is derived from, or varies by reference to —

(i) the value or amount of any currency or currency index; or

(ii) 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 specified licence holder or specified exempt person, means an office (including the head office) or a branch of the specified licence holder or the specified exempt person (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 (Cap. 186); or

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

“foreign representative”, in relation to a specified licence holder or specified exempt person, means a representative of the specified licence holder or specified exempt person (as the case may be), who —

(a) is ordinarily resident outside Singapore;

(b) is not an appointed representative, a provisional representative or a temporary representative of the specified licence holder or specified exempt person, as the case may be; and

(c) carries out for a foreign office of the specified licence holder or specified exempt person (as the case may be) any regulated activity in respect of which the specified licence holder or specified exempt person (as the case may be) is carrying on (through the foreign office) a qualifying business under a cross-border arrangement;

“over-the-counter derivatives contract” or “OTC derivatives contract” means a derivatives contract that is not an exchange-traded derivatives contract;

“specified exempt person” means a person who is exempt from the requirement to hold a capital markets services licence under —

- (a) section 99(1)(a), (b), (c) or (d) of the Act;
- (b) paragraph 3(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10); or
- (c) paragraph 3A(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations;

“specified foreign exchange contract” or “specified FX contract” means any of the following:

- (a) a foreign exchange OTC derivatives contract that is arranged by any bank or merchant bank;
- (b) a spot foreign exchange contract for the purposes of leveraged foreign exchange trading that is arranged by any bank or merchant bank;

“specified licence holder” means a holder of a capital markets services licence, other than a holder of a capital markets services licence for fund management whose licence is limited to the carrying on of a business in the management of portfolios of specified products on behalf of any venture capital fund;

“specified OTC derivatives contract” means an OTC derivatives contract that —

- (a) is not a securities-based derivatives contract; and
- (b) is not a foreign exchange OTC derivatives contract;

“venture capital fund” has the meaning given by regulation 14(8) of the Securities and Futures (Licensing and Conduct of Business) Regulations.

(2) For the purposes of these Regulations, “qualifying business” —

- (a) in relation to a specified exempt person who is exempt from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d) of the Act for any regulated activity (other than dealing in capital markets products) — means a business in the regulated activity in respect of which the specified exempt person has —

- (i) lodged with the Authority —

- (A) a notice under regulation 14(4)(a) of the Securities and Futures (Licensing and Conduct of Business) Regulations as in force immediately before 8 October 2018; or

- (B) a notice under regulation 14(4)(a)(i) of the Securities and Futures (Licensing and Conduct of Business) Regulations; and

- (ii) not lodged a notice under regulation 14(4)(b) of the Securities and Futures (Licensing and Conduct of Business) Regulations as in force before, on or after 8 October 2018;

- (b) in relation to a specified exempt person who is exempt from the requirement to hold a capital markets services licence under section 99(1)(a), (b) or (c) of the Act for dealing in capital markets products that are of one or more types (called in this sub-paragraph the relevant capital markets services products) — means a business in all or any of the following regulated activities:

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- (i) dealing in capital markets products in respect of the relevant capital markets products, where the specified exempt person has, in respect of that regulated activity and those relevant capital markets products —
 - (A) lodged with the Authority —
 - (AA) a notice under regulation 14(4)(a) of the Securities and Futures (Licensing and Conduct of Business) Regulations as in force immediately before 8 October 2018; or
 - (AB) a notice under regulation 14(4)(a)(i) or (ii), (aa) or (ab) of the Securities and Futures (Licensing and Conduct of Business) Regulations; and
 - (B) not lodged a notice under regulation 14(4)(b) of the Securities and Futures (Licensing and Conduct of Business) Regulations as in force before, on or after 8 October 2018;
 - (ii) product financing in respect of the relevant capital markets products that are specified products;
 - (iii) providing custodial services in respect of the relevant capital markets products that are specified products;
- (c) in relation to a specified exempt person who is exempt from the requirement to hold a capital markets services licence under paragraph 3(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations for carrying on business in dealing in capital markets products that are block futures contracts with accredited investors, expert investors or institutional investors — means a business in that regulated activity;
- (d) in relation to a specified exempt person who is exempt from the requirement to hold a capital markets services licence under paragraph 3A(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of

Business) Regulations for dealing in capital markets products that are OTC derivatives contracts with accredited investors, expert investors or institutional investors — means a business in all or any of the following regulated activities:

- (i) dealing in capital markets products that are OTC derivatives contracts;
 - (ii) product financing in respect of OTC derivatives contracts that are specified securities-based derivatives contracts;
 - (iii) providing custodial services in respect of OTC derivatives contracts that are specified securities-based derivatives contracts;
- (e) in relation to a specified licence holder who holds a capital markets services licence for any regulated activity (other than dealing in capital markets products) — means a business in that regulated activity; or
- (f) in relation to a specified licence holder who holds a capital markets services licence for dealing in capital markets products that are of one or more types (called in this sub-paragraph the relevant capital markets products) — means a business in all or any of the following regulated activities:
- (i) dealing in capital markets products in respect of the relevant capital markets products;
 - (ii) product financing in respect of the relevant capital markets products that are specified products;
 - (iii) providing custodial services in respect of the relevant capital markets products that are specified products.

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 specified exempt persons carrying on qualifying businesses in regulated activities through foreign offices under cross-border arrangements

4.—(1) Where all the circumstances mentioned in regulation 10(1) are present —

- (a) a specified exempt person who is exempt from the requirement to hold a capital markets services licence under section 99(1)(a), (b) or (c) of the Act, is exempt from section 99B(3) of the Act and regulations 54(1) and 54B of the Securities and Futures (Licensing and Conduct of Business) Regulations in respect of the specified exempt person's qualifying business that is carried on through its foreign office under a cross-border arrangement;
- (b) a specified exempt person who is exempt under sub-paragraph (a) and whose qualifying business that is carried on through its foreign office under a cross-border arrangement consists of either or both of the following regulated activities, is also exempt from regulation 14(4) of the Securities and Futures (Licensing and Conduct of

Business) Regulations in respect of those regulated activities:

- (i) the regulated activity mentioned in regulation 2(2)(b)(ii) (which is product financing in respect of the relevant capital markets products that are specified products);
 - (ii) the regulated activity mentioned in regulation 2(2)(b)(iii) (which is providing custodial services in respect of the relevant capital markets products that are specified products);
- (c) a specified exempt person who is exempt from the requirement to hold a capital markets services licence under section 99(1)(d) of the Act is exempt from section 99B(3) of the Act in respect of the specified exempt person's qualifying business that is carried on through its foreign office under a cross-border arrangement;
- (d) a specified exempt person who is exempt from the requirement to hold a capital markets services licence under paragraph 3(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations is exempt from sections 82(1) and 99A of the Act in respect of the specified exempt person's qualifying business that is carried on through its foreign office under a cross-border arrangement; and
- (e) a specified exempt person who is exempt from the requirement to hold a capital markets services licence under paragraph 3A(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations is exempt from sections 82(1) and 99A of the Act in respect of the specified exempt person's qualifying business that is carried on through its foreign office under a cross-border arrangement.

(2) A specified exempt person exempt under paragraph (1)(a), (b), (c), (d) or (e) must lodge with the Authority a notice setting out the details of the cross-border arrangement in Form FN —

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- (a) where the specified exempt person had carried on the qualifying business mentioned in paragraph (1)(a), (b), (c), (d) or (e) (as the case may be) immediately before 9 October 2021 — by the 14th day after the day on which the specified exempt person ceases to comply with any of the provisions mentioned in paragraph (1)(a), (b), (c), (d) or (e) (as the case may be) in reliance on the exemption mentioned in that paragraph; or
- (b) where the specified exempt person commences the qualifying business mentioned in paragraph (1)(a), (b), (c), (d) or (e) on or after 9 October 2021 — by the 14th day after the day on which the qualifying business commences.
- (3) A specified exempt person ceases to be exempt under paragraph (1)(a), (b), (c), (d) or (e), as the case may be —
- (a) in the case where the specified exempt person 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 10(1) ceases to be present.

Exemption for specified exempt persons previously carrying on qualifying businesses in dealing in specified contracts through foreign offices under cross-border arrangements

5.—(1) Despite regulation 4(1), a specified exempt person who is exempt from the requirement to hold a capital markets services licence under section 99(1)(a) or (b) of the Act and was, immediately before 9 October 2021, carrying on a qualifying business in dealing in specified OTC derivatives contracts or specified FX contracts through its foreign office under a cross-border arrangement in reliance on the exemption under regulation 60(1) of the Securities and Futures (Licensing and Conduct of Business) Regulations is, on or after that date, exempt from section 99B(3) of the Act and regulations 54(1) and 54B of the Securities and Futures (Licensing

and Conduct of Business) Regulations in respect of the qualifying business that is carried on through its foreign office under the cross-border arrangement.

(2) Despite regulation 4(1), a specified exempt person who is exempt from the requirement to hold a capital markets services licence under section 99(1)(c) of the Act and was, immediately before 9 October 2021, carrying on a qualifying business in dealing in specified OTC derivatives contracts through its foreign office under a cross-border arrangement in reliance on the exemption under regulation 60(2) of the Securities and Futures (Licensing and Conduct of Business) Regulations is, on or after that date, exempt from section 99B(3) of the Act and regulations 54(1) and 54B of the Securities and Futures (Licensing and Conduct of Business) Regulations in respect of the qualifying business that is carried on through its foreign office under the cross-border arrangement.

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

(4) A specified exempt person ceases to be exempt under paragraph (1) or (2), as the case may be —

- (a) in the case where the specified exempt person fails to lodge with the Authority a notice setting out the details of the cross-border arrangement in accordance with paragraph (3) — on 9 October 2022; or
- (b) in any other case —
 - (i) where any of the circumstances mentioned in regulation 10(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 10(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.

Exemption for foreign representatives carrying out regulated activities for foreign offices of specified exempt persons

6.—(1) A foreign representative of a specified exempt person exempt under regulation 4(1)(a) or (b) or 5(1) or (2), when acting as a representative of the specified exempt person that is carrying on the qualifying business mentioned in regulation 4(1)(a) or (b) or 5(1) or (2) (as the case may be), is exempt from —

- (a) section 99B(1) of the Act in respect of any regulated activity carried out under that qualifying business, unless the regulated activity is product financing or providing custodial services; and
- (b) regulations 14(4A), 44 and 47 of the Securities and Futures (Licensing and Conduct of Business) Regulations in respect of any regulated activity carried out under that qualifying business.

(2) A foreign representative of a specified exempt person exempt under regulation 4(1)(c), when acting as a representative of the specified exempt person that is carrying on the qualifying business mentioned in that regulation, is exempt from section 99B(1) of the Act and regulation 14(4A) of the Securities and Futures (Licensing and Conduct of Business) Regulations in respect of any regulated activity carried out under that qualifying business.

(3) A foreign representative of a specified exempt person exempt under regulation 4(1)(d) or (e), when acting as a representative of the specified exempt person that is carrying on the qualifying business mentioned in that regulation is exempt from section 99A of the Act in respect of any regulated activity carried out under that qualifying business.

Exemption for specified licence holders carrying on qualifying businesses in regulated activities through foreign offices under cross-border arrangements

7.—(1) Where all the circumstances mentioned in regulation 10(1) are present —

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- (a) a specified licence holder is exempt from section 99B(3) and Division 2 of Part V of the Act and Parts III and IV (other than regulation 43) of the Securities and Futures (Licensing and Conduct of Business) Regulations in respect of the specified licence holder's qualifying business that is carried on through its foreign office under a cross-border arrangement;
- (b) a specified licence holder who is exempt under sub-paragraph (a) and whose qualifying business that is carried on through its foreign office under a cross-border arrangement, consists of either or both of the following regulated activities, is also exempt from section 82(1) of the Act in respect of those regulated activities:
- (i) the regulated activity mentioned in regulation 2(2)(f)(ii) (which is product financing in respect of the relevant capital markets products that are specified products);
 - (ii) the regulated activity mentioned in regulation 2(2)(f)(iii) (which is providing custodial services in respect of the relevant capital markets products that are specified products); and
- (c) a specified licence holder who is exempt under paragraph (a) and whose qualifying business that is carried on through its foreign office under a cross-border arrangement consists of fund management, is also exempt from regulation 13B of the Securities and Futures (Licensing and Conduct of Business) Regulations in respect of that regulated activity.
- (2) A specified licence holder exempt under paragraph (1)(a), (b) or (c) must lodge with the Authority a notice setting out the details of the cross-border arrangement in Form FN —
- (a) where the specified licence holder had carried on the qualifying business mentioned in paragraph (1)(a), (b) or (c) (as the case may be) immediately before 9 October 2021 — by the 14th day after the day on which the specified licence holder ceases to comply with any of the

provisions mentioned in paragraph (1)(a), (b) or (c) in reliance on the exemption mentioned in that paragraph; or

(b) where the specified licence holder commences the qualifying business mentioned in paragraph (1)(a), (b) or (c) (as the case may be) on or after 9 October 2021 — by the 14th day after the day on which the qualifying business commences.

(3) A specified licence holder ceases to be exempt under paragraph (1)(a), (b) or (c) —

(a) in the case where the specified licence holder 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 10(1) ceases to be present.

Exemption for specified licence holders previously carrying on qualifying businesses in dealing in capital markets products that are specified OTC derivatives contracts through foreign offices under cross-border arrangements

8.—(1) Despite regulation 7(1), a specified licence holder who, immediately before 9 October 2021, was carrying on a qualifying business in dealing in specified OTC derivatives contracts through its foreign office under a cross-border arrangement in reliance on the exemption under regulation 61(1) of the Securities and Futures (Licensing and Conduct of Business) Regulations is, on or after that date, exempt from section 99B(3) and Division 2 of Part V of the Act and Parts III and IV (other than regulation 43) of the Securities and Futures (Licensing and Conduct of Business) Regulations in respect of the qualifying business that is carried on through its foreign office under the cross-border arrangement.

(2) A specified licence holder 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 licence holder ceases to be exempt under paragraph (1) —

- (a) in the case where the specified licence holder 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 10(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 10(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.

Exemption for foreign representatives carrying out regulated activities for foreign offices of specified licence holders

9. A foreign representative of a specified licence holder exempt under regulation 7(1)(a) or (c) or 8(1), when acting as a representative of the specified licence holder that is carrying on the qualifying business mentioned in regulation 7(1)(a) or (c) or 8(1) (as the case may be), is exempt from —

- (a) section 99B(1) of the Act in respect of any regulated activity carried out under that qualifying business, unless the regulated activity is product financing or providing custodial services; and
- (b) regulations 4, 44 and 47 of the Securities and Futures (Licensing and Conduct of Business) Regulations in respect of any regulated activity carried out under that qualifying business.

Circumstances for exemption

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

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- (a) the specified exempt person or specified licence holder (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* for the specified business —
 - (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 88(1) or 99(4) of the Act (as the case may be) as being a class of persons whom *A* may accept as *A*'s customers for the specified business; or
 - (B) does not belong to a class of persons that the Authority has specified under any condition or restriction imposed under section 88(1) or 99(4) of the Act (as the case may be) as being a class of persons whom *A* may not accept as *A*'s customers for the specified business.

(2) In this regulation —

“foreign office” means the foreign office mentioned in regulation 4(1)(a), (b), (c), (d) or (e), 5(1) or (2), 7(1)(a), (b) or (c) or 8(1), as the case may be;

“specified business” means the qualifying business in respect of which *A* is exempt under regulation 4(1)(a), (b), (c), (d) or (e), 5(1) or (2), 7(1)(a), (b) or (c) or 8(1), as the case may be.

Made on 6 October 2021.

RAVI MENON
Managing Director,
Monetary Authority of Singapore.

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