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SECURITIES AND FUTURES ACT (CHAPTER 289)

SECURITIES AND FUTURES (EXEMPTION FOR CROSS-BORDER ARRANGEMENTS) (FOREIGN RELATED CORPORATIONS) 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 Related Corporations) 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 means a law or regulatory requirement of a 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 between an FRC of a specified person and the specified person under which the FRC carries on 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 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 any of the written laws set out in the Schedule to that Act; 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 or any of the written laws set out in the Schedule to that Act under the law of, or by delegation from an authority of, a foreign jurisdiction;

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“foreign representative”, in relation to an FRC of a specified person, means a representative of the FRC who carries out for the FRC any regulated activity in respect of which the FRC is carrying on a qualifying business under a cross-border arrangement;

“FRC” or “foreign related corporation”, in relation to a specified person, means a foreign company that is a related corporation of the specified person;

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

“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;

“specified person” means —

- (a) a person who is exempt from the requirement to hold a capital markets services licence under —
 - (i) section 99(1)(a), (b), (c) or (d) of the Act;
 - (ii) paragraph 3(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10); or
 - (iii) paragraph 3A(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations; or
- (b) a specified licence holder;

“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 an FRC of a specified 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 person has —

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- (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 an FRC of a specified 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 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:
- (i) dealing in capital markets products in respect of the relevant capital markets products, where the specified 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

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- (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 an FRC of a specified 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 an FRC of a specified 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 an FRC of 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 an FRC of 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 FRCs of specified persons carrying on qualifying businesses in regulated activities under cross-border arrangements, and their foreign representatives

4.—(1) Where all the circumstances mentioned in regulation 6(1) are present, an FRC of a specified person is exempt from sections 82(1) and 99A of the Act in respect of the FRC's qualifying business that —

(a) is carried on by the FRC under a cross-border arrangement; and

(b) commences on or after 9 October 2021.

(2) The specified person of an FRC exempt under paragraph (1) must lodge with the Authority a notice setting out the details of the cross-border arrangement in Form FN by the 14th day after the day on which the qualifying business commences.

(3) An FRC of a specified person ceases to be exempt under paragraph (1) —

(a) in the case where the specified 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 date immediately after the date mentioned in paragraph (2); or

(b) in any other case — on the date on which any of the circumstances mentioned in regulation 6(1) ceases to be present.

(4) A foreign representative of an FRC exempt under paragraph (1), when acting as a representative of the FRC that is carrying on the qualifying business mentioned in that paragraph, is exempt from section 99A of the Act in respect of any regulated activity carried out under that business.

Exemption for FRCs of specified persons previously carrying on qualifying businesses in regulated activities under cross-border arrangements, and their foreign representatives

5.—(1) Where all the circumstances mentioned in regulation 6(1) are present, an FRC of a specified person who, immediately before 9 October 2021, was —

- (a) carrying on a qualifying business under a cross-border arrangement that is approved by the Authority under paragraph 9 of the Third Schedule to the Act; or
- (b) carrying on a qualifying business in dealing in capital markets products that are specified OTC derivatives contracts, specified FX contracts or units in a collective investment scheme under a cross-border arrangement in reliance on an exemption under regulation 65(1), (2) or (3) of the Securities and Futures (Licensing and Conduct of Business) Regulations, respectively,

is exempt from sections 82(1) and 99A of the Act in respect of the FRC's qualifying business that is carried on by the FRC under a cross-border arrangement, if the specified person has lodged with the Authority a notice of the cross-border arrangement in Form FN on or before 8 October 2022.

(2) The FRC mentioned in paragraph (1) is exempt under that paragraph on the day of the lodgment of the notice of the cross-border arrangement with the Authority.

(3) An FRC of a specified person ceases to be exempt under paragraph (1) on the date on which any of the circumstances mentioned in regulation 6(1) ceases to be present.

(4) A foreign representative of an FRC exempt under paragraph (1), when acting as a representative of the FRC that is carrying on the qualifying business mentioned in that paragraph, is exempt from section 99A of the Act in respect of any regulated activity carried out under that business.

Circumstances for exemption

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

- (a) the FRC of the specified person carries out all its activities under the cross-border arrangement through one or more branches or offices (including its head office) that are established in one or more foreign jurisdictions;
- (b) the FRC is subject to regulatory oversight, in respect of any activity that is carried out by the FRC, by a foreign regulatory authority in each of the foreign jurisdictions mentioned in sub-paragraph (a);
- (c) the FRC is subject to AML/CFT requirements of every 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 the FRC complies with the AML/CFT requirements;
- (d) the FRC and every 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
- (e) any customer of the FRC of the specified person 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 the specified person may accept as the specified person'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 the specified person may not accept as the specified person's customers for the specified business.

(2) In this regulation, "specified business" means the qualifying business in respect of which the FRC of the specified person is exempt under regulation 4(1) or 5(1), as the case may be.

Made on 6 October 2021.

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Monetary Authority of Singapore.

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