

**DRAFT AMENDMENTS TO THE
SECOND SCHEDULE TO THE SECURITIES AND FUTURES
(LICENSING AND CONDUCT OF BUSINESS) REGULATIONS**

DISCLAIMER: This version of the amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

SECOND SCHEDULE

Regulation 14

EXEMPTIONS FROM SECTION 82(1) AND 99B(1) OF ACT

Definitions

1. In this Schedule –

[...]

“block futures contract” means any bilaterally-negotiated contract which meets the minimum trade size set by the organised market;

[...]

“over-the-counter derivative contract” means a derivative contract which is not an exchange-traded derivative contract;

Dealing in Capital Markets Products in respect of Over-the-counter Derivative Contracts

Exemption from requirement to hold capital markets services licence to deal in capital markets products in respect of over-the-counter derivative contracts

X.—(1) The following persons shall be exempted from the requirement to hold a capital markets services licence to carry on business in dealing in capital markets products in respect of over-the-counter derivative contracts, subject to the conditions and restrictions specified:

- (a) a person who carries on business in dealing in capital markets products in respect of over-the-counter derivative contracts for his own account or an account belonging to and maintained wholly for the benefit of a related corporation, and with another related corporation;
- (b) a person who carries on business in dealing in capital markets products in respect of over-the-counter derivative contracts where the underlying thing is a commodity with accredited investors or institutional investors;
- (c) a person who –

- (i) carries on business in dealing in capital markets products in respect of over-the-counter derivative contracts for his own account or an account belonging to and maintained wholly for the benefit of a related corporation;
 - (ii) enters into such over-the-counter derivative contracts with—
 - (A) the holder of a capital markets services licence to deal in capital markets products in respect of over-the-counter derivative contracts;
 - (B) a bank licensed under the Banking Act;
 - (C) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act;
 - (D) a bank licensed, registered, approved or otherwise regulated under the laws of a jurisdiction outside Singapore to conduct banking business; or
 - (E) a corporation or firm licensed or registered to carry on business in dealing in capital markets products in respect of over-the-counter derivative contracts under the laws of a jurisdiction outside Singapore; and
 - (iii) does not derive or receive a spread, or other remuneration in return for dealing in capital markets products in respect of over-the-counter derivative contracts.
- (d) a person whose dealing in capital markets products in respect of over-the-counter derivative contracts is solely incidental to his carrying on business in fund management;
- (e) a corporation –
- (i) which carries on business in Singapore in dealing in capital markets products in respect of over-the-counter derivative contracts with only accredited investors (within the meaning as defined in section 4A(1)(a) of the Act) which are corporations, or institutional investors (within the meaning as defined in section 4A(1)(c) of the Act);
 - (ii) which does not carry any customer's position, margin or account in its books;
 - (iii) which does not accept money or assets from any customer as settlement of, margin for or to guarantee any contract in over-the-counter derivative contract transaction entered by that customer;
 - (iv) which does not, whether as principal or agent, become a party to any over-the-counter derivative contract;

- (v) which is not a member of an approved exchange or an approved clearing house; and
 - (vi) which is registered with the Authority in accordance with sub-paragraph (7) and the registration is and continues to be published on the Authority's website; or
 - (f) an approved global trading company, within the meaning of the Income Tax Act (Cap. 134), which carries on a business involving dealing in capital markets products in respect of over-the-counter derivative contracts where the specified underlying thing is a commodity.
- (2) For the purposes of sub-paragraph (1)(c)(iii), "remuneration" includes any incentive, benefit or reward and for avoidance of doubt includes non-monetary incentive, benefit or reward, as the case may be.
- (3) For the purposes of sub paragraph (1), –
- (a) a person, corporation or approved global trading company otherwise exempted under sub-paragraph (1) shall not be or shall cease to be so exempted if he also carries on business in dealing in capital markets products in respect of over-the-counter derivative contracts other than in accordance with sub-paragraph (1)(a), (b), (c), (d), (e) or (f), as the case may be.
 - (b) A corporation otherwise exempted under sub-paragraph (1)(e) shall not be or shall cease to be so exempted if –
 - (i) it is or becomes the holder of a capital markets services licence in respect of any regulated activity;
 - (ii) it has not commenced business in dealing in capital markets products in respect of over-the-counter derivative contracts within 6 months from the date of its registration by the Authority as a Registered OTC Derivatives Broker under sub-paragraph (7); or
 - (iii) it has ceased to carry on business in dealing in capital markets products in respect of over-the-counter derivative contracts, and has not resumed business in the same regulated activity in accordance with that sub-paragraph, within a continuous period of 6 months from the date of cessation.
- (4) An individual shall not be or shall cease to be so exempted to carry on business in dealing in capital markets products in respect of over-the-counter derivative contracts if –

- (a) he is or becomes a representative or employee of the holder of a capital markets services licence for dealing in capital markets products in respect of over-the-counter derivative contracts;
- (b) he is or becomes an undischarged bankrupt whether in Singapore or elsewhere;
or
- (c) he has been convicted of a relevant offence.

(5) A corporation otherwise exempted under sub-paragraph (1)(e) shall not be or shall cease to be so exempted if –

- (a) the corporation or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) execution against the corporation or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, a judicial manager or such other person having the powers and duties of a receiver, receiver and manager or judicial manager, has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the corporation or its substantial shareholder;
- (d) the corporation or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
or
- (e) the corporation or its substantial shareholder has been convicted of a relevant offence.

(6) A person who is exempted under sub-paragraph (1)(e) shall –

- (a) take reasonable measures to verify that the persons on behalf of whom he carries on business in dealing in capital markets products in respect of over-the-counter derivative contracts are accredited investors which are corporations, or institutional investors; and
- (b) ensure that proper records are kept of any document evidencing the status of such persons.

(7) A corporation which seeks to be exempted under sub-paragraph (1)(e) shall register with the Authority as a Registered OTC Derivatives Broker by lodging with the Authority a notice of commencement of its business in Form xx not later than 14 days after the commencement of its business in dealing in capital markets products in

respect of over-the-counter derivative contracts, accompanied by a non-refundable annual fee which shall be paid in the manner specified by the Authority in writing.

(8) A corporation shall not hold itself out as a Registered OTC Derivatives Broker, unless it has fulfilled all the requirements in sub-paragraph (1)(e).

(9) The Authority may cancel the registration of a corporation under sub-paragraph (7) if the corporation ceases to be exempted from the requirement to hold a capital markets services licence to carry on business in dealing in capital markets products in respect of over-the-counter derivative contracts under sub-paragraph (1)(e).

(10) A Registered OTC Derivatives Broker –

(a) shall ensure that it is able to pay its debts in full as they fall due and that the value of its assets shall not be less than the value of its liabilities (including contingent liabilities) at all times; and

(b) shall at all times employ at least 2 persons in Singapore, each of whom has at least 5 years' experience that is relevant to the business in dealing in capital markets products in respect of over-the-counter derivative contracts that it is carrying on.

(11) If a corporation which carries on business in dealing in capital markets products in respect of over-the-counter derivative contracts in reliance on sub-paragraph (1)(e) fails to meet any or all of the criteria in sub-paragraphs (1)(e)(i) to (1)(e)(v) or to comply with sub-paragraph (10), or becomes aware that it will likely fail to meet any of those criteria or to comply with sub-paragraph (10), it shall immediately notify the Authority.

(12) If the Authority becomes aware that a corporation which carries on business in dealing in capital markets products in respect of over-the-counter derivative contracts in reliance on sub-paragraph (1)(e) fails to meet any or all of the criteria in sub-paragraphs (1)(e)(i) to (1)(e)(v) or to comply with sub-paragraph (10), the Authority may direct the Registered Broker to operate its business in such manner and on such condition as the Authority may impose, and the corporation to whom such direction is issued shall comply with the direction.

(13) A Registered OTC Derivatives Broker shall lodge with the Authority –

(a) a notice of change of particulars in Form xx providing any change in the particulars in the notice lodged under sub-paragraph (7), not later than 14 days after the date of the change;

(b) a notice of cessation of business in Form xx at any time prior to the cessation of its business in dealing in capital markets products in respect of over-the-counter derivative contracts; and

(c) an annual declaration in Form xx within one month after the end of each of its financial years.

(14) A Registered OTC Derivatives Broker shall, in respect of each financial year –

(a) prepare a true and fair profit and loss account and a balance-sheet made up to the last day of the financial year; and

(b) lodge that account and balance-sheet, together with a certification from its auditor that the Registered OTC Derivatives Broker has complied with all the criteria in sub-paragraphs (1)(e)(i) to (1)(e)(v) and paragraph (10), with the Authority within 5 months, or such extension thereof permitted by the Authority, after the end of the financial year.

(15) Each person exempted under sub-paragraph (1)(e) or (f) shall furnish to the Authority, at such time and in such manner as the Authority may direct, all such information concerning his business in dealing in capital markets products in respect of over-the-counter derivative contracts as the Authority may reasonably require.

[...]

Dealing in Capital Markets Products in respect of Exchange-Traded Derivative Contracts

Exemption from requirement to hold capital markets services licence to deal in capital markets products in respect of exchange-traded derivative contracts which are futures contracts

3.—(1) The following persons shall be exempted from the requirement to hold a capital markets services licence to carry on business in dealing in capital markets products in respect of exchange-traded derivative contracts which are futures contracts, subject to the conditions and restrictions specified:

[...]

(d) a corporation –

(i) which carries on business in Singapore in dealing in capital markets products in respect of exchange-traded derivative contracts which are futures contracts

with only accredited investors (within the meaning as defined in section 4A(1)(a) of the Act) which are corporations, or institutional investors (within the meaning as defined in section 4A(1)(c) of the Act);

- (ii) which does not carry any customer's position, margin or account in its books;
- (iii) which does not accept money or assets from any customer as settlement of, margin for or to guarantee any transaction in futures contracts entered by that customer;
- (iv) which does not, whether as principal or agent, become a party to any futures contract;
- (v) which is not a member of an approved exchange or an approved clearing house;
- (vi) which deals only in block futures contracts; and
- (vii) which is registered with the Authority in accordance with sub-paragraph (6) and the registration is and continues to be published on the Authority's website;

(2) For the purposes of sub -paragraph (1), –

- (a) a person otherwise exempted under sub-paragraph (1)(d) shall not be or shall cease to be so exempted if he also carries on business in dealing in capital markets products in respect of exchange-traded derivative contracts which are futures contracts other than in accordance with sub-paragraph (1)(d).
- (b) A person otherwise exempted under sub-paragraph (1)(d) shall not be or shall cease to be so exempted if –
 - (a) it is the holder of a capital markets services licence in respect of any regulated activity;
 - (b) it has not commenced business in dealing in capital markets products in respect of exchange traded derivative contracts which are futures contracts within 6 months from the date of its registration by the Authority as a Registered Futures Broker under sub-paragraph (7); or
 - (c) it has ceased to carry on business in dealing in capital markets products in respect of exchange traded derivative contracts which are futures contracts and has not resumed business in the same regulated activity in accordance with that sub-paragraph, within a continuous period of 6 months from the date of cessation.

- (3) An individual shall not be or shall cease to be so exempted if –
- (a) he is or becomes a representative or employee of the holder of a capital markets services licence for dealing in capital markets products in respect of exchange-traded derivative contracts which are futures contracts;
 - (b) he is or becomes an undischarged bankrupt whether in Singapore or elsewhere;
or
 - (c) he has been convicted of a relevant offence.
- (4) A corporation otherwise exempted under sub-paragraph (1)(d) shall not be or shall cease to be so exempted if –
- (a) the corporation or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
 - (b) execution against the corporation or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
 - (c) a receiver, a receiver and manager, a judicial manager or such other person having the powers and duties of a receiver, receiver and manager or judicial manager, has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the corporation or its substantial shareholder;
 - (d) the corporation or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
or
 - (e) the corporation or its substantial shareholder has been convicted of a relevant offence.
- (5) A person who is exempted under sub-paragraph (1)(d) shall –
- (a) take reasonable measures to verify that the persons on behalf of whom he carries on business dealing in capital markets products in respect of exchange traded derivative contracts which futures contracts are accredited investors which are corporations, or institutional investors; and
 - (b) ensure that proper records are kept of any document evidencing the status of such persons.
- (6) A corporation which seeks to be exempted under sub-paragraph (1)(d) shall register with the Authority as a Registered Futures Broker by lodging with the Authority a notice of commencement of its business in Form xx not later than 14 days

after the commencement of its business in dealing in capital markets products in respect of exchange-traded derivative contracts which are futures contracts, accompanied by a non-refundable annual fee which shall be paid in the manner specified by the Authority in writing.

(7) A corporation shall not hold itself out as a Registered Futures Broker, unless it has fulfilled all the requirements in sub-paragraph (1)(d).

(8) The Authority may cancel the registration of a corporation under sub-paragraph (6) if the corporation ceases to be exempted from the requirement to hold a capital markets services licence to carry on a business in dealing in capital markets products in respect of over-the-counter derivative contracts under sub-paragraph 1(d).

(9) A Registered Futures Broker –

(a) shall ensure that it is able to pay its debts in full as they fall due and that the value of its assets shall not be less than the value of its liabilities (including contingent liabilities) at all times; and

(b) shall at all times employ at least 2 persons in Singapore, each of whom has at least 5 years' experience that is relevant to the business in dealing in capital markets products in respect of exchange-traded derivative contracts which are futures contracts that it is carrying on.

(10) If a corporation which carries on business in dealing in capital markets products in respect of futures contracts in reliance on sub-paragraph (1)(d) fails to meet any or all of the criteria in sub-paragraphs (1)(d)(i) to (1)(d)(vi) or to comply with sub-paragraph (9), or becomes aware that it will likely fail to meet any of those criteria or to comply with sub-paragraph (10), it shall immediately notify the Authority.

(11) If the Authority becomes aware that a corporation which carries on business in dealing in capital markets products in respect of exchange traded derivative contracts which are futures contracts in reliance on sub-paragraph (1)(d) fails to meet any or all of the criteria in sub-paragraphs (1)(d)(i) to (1)(d)(vi) or to comply with sub-paragraph (9), the Authority may direct the Registered Futures Broker to operate its business in such manner and on such condition as the Authority may impose, and the corporation to whom such direction is issued shall comply with the direction.

(12) A Registered Futures Broker shall lodge with the Authority –

(a) a notice of change of particulars in Form xx providing any change in the particulars in the notice lodged under sub-paragraph (6), not later than 14 days after the date of the change;

(b) a notice of cessation of business in Form xx at any time prior to the cessation of its business in dealing in capital markets products in respect of exchange-traded derivative contracts which are futures contracts; and

(c) an annual declaration in Form xx within one month after the end of each of its financial years.

(13) A Registered Futures Broker shall, in respect of each financial year –

(a) prepare a true and fair profit and loss account and a balance-sheet made up to the last day of the financial year; and

(b) lodge that account and balance-sheet, together with a certification from its auditor that the Registered Futures Broker has complied with all the criteria in sub-paragraphs (1)(d)(i) to (1)(d)(vi) and paragraph (9), with the Authority within 5 months, or such extension thereof permitted by the Authority, after the end of the financial year.

(14) Each person exempted under sub-paragraph (1)(d) shall furnish to the Authority, at such time and in such manner as the Authority may direct, all such information concerning his business in dealing in capital markets products in respect of exchange-traded derivative contracts which are futures contracts as the Authority may reasonably require.

[...]

Fund Management

Exemption from requirement to hold capital markets services licence for fund management

5.—(1) The following persons shall be exempted from the requirement to hold a capital markets services licence to carry on business in fund management, subject to the conditions and restrictions specified:

[...]

(j) A person who carries on business in fund management in Singapore by managing a collective investment scheme where the underlying assets are assets other than capital markets products, and which the participants are all qualified investors.