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First published in the *Government Gazette*, Electronic Edition, on 30 March 2017 at 5 pm.

## No. S 113

### FINANCIAL ADVISERS ACT (CHAPTER 110)

#### FINANCIAL ADVISERS (AMENDMENT) REGULATIONS 2017

In exercise of the powers conferred by section 104 of the Financial Advisers Act, the Monetary Authority of Singapore makes the following Regulations:

#### **Citation and commencement**

1. These Regulations are the Financial Advisers (Amendment) Regulations 2017 and come into operation on 1 April 2017.

#### **New regulation 33A**

2. The Financial Advisers Regulations (Rg 2) (called in these Regulations the principal Regulations) are amended by inserting, immediately after regulation 33, the following regulation:

#### **“Exemption from section 27 for dealers and related exemptions**

**33A.**—(1) A dealer is exempt from section 27 of the Act (as it applies to the dealer by reason of section 23(4) of the Act) in relation to a recommendation of a listed excluded investment product provided to the dealer’s client by the dealer or a trading representative of the dealer, subject to the following conditions:

- (a) the dealer or trading representative, as the case may be, provides together with the recommendation —
  - (i) execution-related advice for the listed excluded investment product being recommended; and
  - (ii) the rationale for the advice;
- (b) the dealer has given to the client notice of the matters mentioned in paragraph (2), at the time mentioned in paragraph (3), whether directly, or indirectly through the dealer’s trading representative or any other agent.

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(2) The matters to be in the notice under paragraph (1)(b) are all of the following:

- (a) that any execution-related advice provided by the dealer or the dealer's trading representative, as the case may be, does not take into account any of the client's investment objectives, financial situation or particular needs;
- (b) that it is the responsibility of the client to ensure that the listed excluded investment product to which the execution-related advice relates, and in which the client intends to invest, suits the client.

(3) The time of giving the notice under paragraph (1)(b) is before any execution-related advice is given by the dealer, or the dealer's trading representative, to the client for the first time on or after 1 April 2017.

(4) A dealer under paragraph (1) is exempt from section 23B(3)(a) of the Act in respect of any trading representative that provides a recommendation of a listed excluded investment product on behalf of the dealer to a client of the dealer under the conditions mentioned in that paragraph, and such trading representative is exempt from section 23B(1)(a) of the Act in providing such recommendation.

(5) A dealer must keep a register containing the details mentioned in paragraph (6) of every trading representative —

- (a) in respect of whom the exemption under paragraph (4) relates; and
- (b) who is not specified in the public register of representatives as an appointed representative or a provisional representative in respect of any type of financial advisory service.

(6) For the purpose of paragraph (5), the details of the trading representative are as follows:

- (a) name;
- (b) identity card number or passport number;
- (c) date on which the trading representative commences providing recommendations in accordance with paragraph (1)(a) on behalf of the dealer;

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(d) date on which the trading representative ceases providing recommendations in accordance with paragraph (1)(a) on behalf of the dealer.

(7) A dealer that fails to comply with paragraph (5) shall be guilty of an offence.

(8) In this regulation —

“client” includes a prospective client;

“dealer” means a person exempt from holding a financial adviser’s licence under section 23(1)(a), (b) or (d) of the Act and who carries on a business of providing execution-related advice;

“execution activities” means dealing in securities —

(a) that have received approval in-principle for listing and quotation on any securities exchange or overseas securities exchange; or

(b) are listed for quotation or quoted on any securities exchange or overseas securities exchange;

“execution-related advice” means advice that is provided by a dealer, or a trading representative of the dealer, to a client of the dealer where —

(a) the advice concerns any listed excluded investment product;

(b) the advice is provided to the client directly or through any publication or writing, whether in electronic, print or other form (other than through the issuance or promulgation of any research analysis or research report, whether in electronic, print or other form);

(c) the provision of the advice is solely incidental to the carrying out of any execution activities by the dealer or the trading representative (as the case may be); and

(d) no discrete fee is charged by the dealer or trading representative (as the case may be) for the advice;

“listed excluded investment product” means a listed excluded investment product specified in the Fifth Schedule;

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“overseas securities exchange” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);

“trading representative”, in relation to a dealer, means an individual who is an appointed representative, a provisional representative or a temporary representative, as defined in section 2(1) of the Securities and Futures Act, of the dealer in respect of the execution activities.”.

### **Amendment of regulation 34A**

**3.** Regulation 34A(2) of the principal Regulations is amended by deleting the definition of “execution activities” and substituting the following definition:

“ “execution activities” means either or both of the following activities:

- (a) dealing in securities that have received approval in-principle for listing and quotation on, or are listed for quotation or quoted on, any securities exchange or overseas securities exchange;
- (b) trading in futures contracts;”.

### **New Fifth Schedule**

**4.** The principal Regulations are amended by inserting, immediately after the Fourth Schedule, the following Schedule:

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“FIFTH SCHEDULE

Regulation 33A(8)

LISTED EXCLUDED INVESTMENT PRODUCTS

1. For the purpose of regulation 33A, a listed excluded investment product is any of the following securities approved in-principle for listing and quotation on, or listed for quotation or quoted on, any securities exchange or overseas securities exchange:

- (a) any stocks or shares issued or proposed to be issued by a corporation or body unincorporate (other than a corporation or body unincorporate that is a collective investment scheme);
- (b) any unit of a share that represents a unitholder’s ownership in an underlying share, where —
  - (i) the underlying share is held on trust for the unitholder by a custodian; and
  - (ii) the unitholder is not obliged to pay any consideration for the purpose of converting the unit into the underlying share, other than administrative fees for the conversion;
- (c) any right, option or derivative issued or proposed to be issued by a corporation or body unincorporate in respect of its own stocks or shares;
- (d) any unit in a business trust;
- (e) any derivative of a unit in a business trust;
- (f) any unit in a collective investment scheme which satisfies all of the following conditions:
  - (i) the collective investment scheme is constituted as a trust;
  - (ii) the collective investment scheme invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes;
- (g) any unit in a collective investment scheme in the circumstances mentioned in paragraph 2;
- (h) any debenture other than —
  - (i) asset-backed securities; or
  - (ii) structured notes;
- (i) any 2 or more of the securities mentioned in sub-paragraphs (a) to (h) that are linked together in a stapled manner such that any such securities is not transferable and cannot be otherwise dealt with independent of the remaining securities.

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FIFTH SCHEDULE — *continued*

2. For the purpose of paragraph 1(g), the circumstances are all of the following:
- (a) the CIS documents of the collective investment scheme require that the manager of the scheme must not engage in any securities lending transaction or securities repurchase transaction in relation to the scheme, except where —
    - (i) the securities lending transaction or securities repurchase transaction (as the case may be) is carried out for the sole purpose of efficient portfolio management; and
    - (ii) the total value of securities subject to all the securities lending transactions and securities repurchase transactions entered into by the manager does not exceed 50% of the net asset value of the scheme at any time,and the manager complies with the requirement;
  - (b) the CIS documents of the collective investment scheme require that the manager of the scheme must —
    - (i) invest the property of the scheme only in one or more of the following:
      - (A) deposits as defined in section 4B(4) of the Banking Act (Cap. 19);
      - (B) gold certificates, gold savings accounts or physical gold;
      - (C) any securities mentioned in paragraph 1(a) to (i);
      - (D) any contract or arrangement under which one party agrees to exchange currency at an agreed rate of exchange with another party, and such currency exchange is effected immediately after the contract or arrangement, as the case may be, is entered into;
      - (E) any product, instrument, contract or arrangement (other than the securities mentioned in paragraph 1(a) to (i)) if the investment in such product, instrument, contract or arrangement is solely for the purpose of hedging or efficient portfolio management; or
    - (ii) invest the property of the scheme as follows:
      - (A) only in one or more products, instruments, contracts or arrangements mentioned in sub-paragraph (i); but
      - (B) may invest in some other product, instrument, contract or arrangement if —
        - (BA) there is any change in any written law, regulation, direction, rule or non-statutory instrument of the jurisdiction where the scheme is constituted, operating or investing; and

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FIFTH SCHEDULE — *continued*

(BB) following such change, the manager is restricted or prohibited from investing in any of the products, instruments, contracts or arrangements mentioned in sub-paragraph (i),

and, in the case of either sub-paragraph (i) or (ii), the manager invests the property of the scheme only in one or more of the products, instruments, contracts or arrangements mentioned in sub-paragraph (i).

3. Where, under paragraph 2, the manager of the collective investment scheme invests the property of the scheme in any product, instrument, contract or arrangement not mentioned in paragraph 2(b)(i), whether or not in accordance with a requirement mentioned in paragraph 2(b)(ii)(B), then the unit in the CIS ceases to be a listed excluded investment product with effect from the date of the investment.

4. In this Schedule, unless the context otherwise requires —

“asset-backed securities” has the same meaning as in section 262(3) of the Securities and Futures Act (Cap. 289);

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

“CIS documents”, in relation to a collective investment scheme, means —

- (a) the constitutive documents of the collective investment scheme;
- (b) the prospectus issued in connection with an offer of units in the collective investment scheme; or
- (c) any other document issued in connection with an offer of units in the collective investment scheme that does not need to be made in or be accompanied by a prospectus under section 296 of the Securities and Futures Act;

“Code on Collective Investment Schemes” means the Code on Collective Investment Schemes issued under section 284 of the Securities and Futures Act;

“overseas securities exchange” has the same meaning as in section 2(1) of the Securities and Futures Act;

“structured notes” has the same meaning as in regulation 2(1) of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 (G.N. No. S 611/2005);

“unit” —

- (a) for the purposes of paragraph 1(b), has the same meaning as in section 239(1) of the Securities and Futures Act; and
- (b) for the purposes of paragraph 1(d), (e), (f) and (g), has the same meaning as in section 2(1) of the Securities and Futures Act.”.

*[G.N. Nos. S 76/2004; S 692/2004; S 362/2005; S 58/2007; S 274/2008; S 716/2010; S 433/2011; S 383/2012; S 166/2013; S 169/2015; S 394/2015; S 815/2015; S 521/2016]*

Made on 24 March 2017.

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[CMI FA 01/2017; AG/LEGIS/SL/110/2015/2 Vol. 2]