



Monetary Authority of Singapore

**SECURITIES AND FUTURES ACT
(CAP. 289)**

NOTICE ON THE SALE OF INVESTMENT PRODUCTS

Notice No : SFA 04-N12
Issue Date : 28 July 2011 (last updated on 1 January 2012)

NOTICE ON THE SALE OF INVESTMENT PRODUCTS

Introduction

1 This Notice is issued pursuant to section 101 of the Securities and Futures Act (Cap. 289) [“the Act”].

2 This Notice shall apply to:

- (a) a licensed person in respect of its dealing in securities, trading in futures contracts, leveraged foreign exchange trading or any combination of these regulated activities;
- (b) an exempt financial institution in respect of its dealing in securities, trading in futures contracts, leveraged foreign exchange trading or any combination of these regulated activities; and
- (c) representatives of the persons referred to in sub-paragraphs (a) and (b).

3 This Notice sets out the requirements imposed on licensed persons, exempt financial institutions and their representatives in respect of dealing in Specified Investment Products for a customer who is an individual and who is not an accredited investor, institutional investor or expert investor (referred to in this Notice as “Customer”).

Definitions

4 For the purposes of this Notice:

“accredited investor” has the same meaning as in section 4A of the Act;

“approved exchange” has the same meaning as in section 2(1) of the Act;

“capital markets products” has the same meaning as in section 2(1) of the Act;

“connected person” has the same meaning as in section 2(1) of the Act;

“Customer Account Review” means a review of a Customer’s knowledge and experience in derivatives for the purpose of opening an account for the Customer to trade in a Specified Investment Product which is listed on a securities market or a futures market;

“Customer Knowledge Assessment” means a review of a Customer’s knowledge and experience in a Specified Investment Product which is neither listed nor quoted on a securities market or a futures market;

“exempt financial adviser” means a person who is exempt from holding a financial adviser’s licence under section 23(1)(a), (b), (c), (d) or (e) of the Financial Advisers Act (Cap. 110);

“exempt financial institution” means a person who is exempt from holding a capital markets services licence under section 99(1)(a) or (b) of the Act;

“Excluded Investment Product” means any capital markets product set out in Annex 1 to this Notice;

“expert investor” has the same meaning as in section 4A of the Act;

“financial adviser” means a holder of a financial adviser’s licence of the Financial Advisers Act (Cap. 110) or an exempt financial adviser;

“futures market” has the same meaning as in section 2(1) of the Act;

“institutional investor” has the same meaning as in section 4A of the Act;

“licensed person” means a holder of a capital markets services licence of the Act;

“product manufacturer” means, in relation to an offer of capital markets products, the entity that issued or will be issuing the capital markets product being offered;

“recognised securities exchange” means a corporation which has been declared by the Authority, by order published in the *Gazette*, to be a recognised securities exchange for the purposes of Divisions 1, 1A and 2 of Part XIII of the Act;

“representative” has the same meaning as in section 2(1) of the Act;

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

“securities market” has the same meaning as section 2(1) of the Act;

“senior management” means any person holding the office of chief executive officer or executive director in the licensed person or the exempt financial institution; and

“Specified Investment Product” means any capital markets product other than an Excluded Investment Product.

Representatives of Licensed Persons or Exempt Financial Institutions

5 Unless otherwise specified, a representative shall comply with any requirement imposed on a licensed person or an exempt financial institution in this Notice when acting as a representative of that licensed person or exempt financial institution.

Customer Account Review

6 A licensed person or an exempt financial institution shall conduct a Customer Account Review based on criteria set out in Annex 2 to this Notice before opening an account for a Customer to transact in any Specified Investment Product which is listed or quoted on a securities market or a futures market (referred to in this Notice as “Specified Investment Product trading account”).

7 For the purpose of the Customer Account Review, a licensed person or an exempt financial institution shall take into consideration information on a Customer's educational qualifications, investment experience and work experience. Where a Customer does not provide information on his educational qualifications, investment experience or work experience, the licensed person or the exempt financial institution shall deem the Customer not to possess knowledge or experience in derivatives.

8 A licensed person or an exempt financial institution shall highlight to the Customer in writing that any inaccurate or incomplete information provided by the Customer may affect the outcome of the Customer Account Review.

9 Subject to paragraph 14, a licensed person or an exempt financial institution shall not open a Specified Investment Product trading account for a Customer, unless its senior management who is not involved in that particular account opening process and is not a connected person of that Customer:

- (a) is satisfied, on the basis of the outcome of the Customer Account Review referred to in paragraph 6, that the Customer has knowledge or experience in derivatives, as set out in Annex 2 to this Notice; and
- (b) has approved the opening of the Customer's Specified Investment Product trading account.

[SFA04-N12 (Amendment) 2011]

10 Regardless of the outcome of the Customer Account Review, a licensed person or an exempt financial institution who is also an exempt financial adviser shall include a statement in its account opening form that a Customer can, at any time, request for advice concerning a Specified Investment Product. Upon such request, the licensed person or the exempt financial institution shall provide such advice to the Customer concerned.

[SFA04-N12 (Amendment) 2011]

Requirements where Customers are Assessed Not to Possess Knowledge or Experience in Derivatives

11 Where a licensed person or an exempt financial institution assesses a

Customer not to possess knowledge or experience in derivatives pursuant to the Customer Account Review, it shall inform the Customer of the outcome of the Customer Account Review.

12 Where a Customer, after being informed of the outcome of the Customer Account Review in accordance with paragraph 11, nevertheless intends to proceed to open a trading account to transact in a Specified Investment Product, the licensed person or the exempt financial institution shall:

- (a) inform the Customer in writing of the outcome of the Customer Account Review;
- (b) obtain the Customer's written confirmation that he still intends to proceed with the opening of a Specified Investment Product trading account despite not being in possession of knowledge or experience in derivatives;
- (c) explain to the Customer the general features and risks associated with investing in derivatives and provide the Customer a written statement of the explanation given; and
- (d) inform the Customer in writing that it is the Customer's responsibility to ensure that he understands any capital markets product(s) that he intends to transact using the Specified Investment Product trading account.

[SFA04-N12 (Amendment) 2011]

13 For the avoidance of doubt, the licensed person or the exempt financial institution has to be exempted from holding a financial adviser's licence, for the purposes of providing any financial advisory services concerning any Specified Investment Product, including for the discharge of its obligations under paragraph 12(c).

[SFA04-N12 (Amendment) 2011]

14 A licensed person or an exempt financial institution shall not open a Specified Investment Product trading account for a Customer referred to in paragraph 12, unless its senior management who has not been involved in the process of the opening of the account and is not a connected person of that

Customer:

- (a) has confirmed with the Customer that the Customer has been properly informed of all relevant facts as required under paragraph 12, and that the Customer is aware of the implications and consequences of proceeding with opening a Specified Investment Product trading account;
- (b) is satisfied that the licensed person or the exempt financial institution has complied with the requirements set out in paragraph 12; and
- (c) has approved the Customer's Specified Investment Product trading account.

15 For avoidance of doubt, where a Customer of a licensed person or an exempt financial institution has a Specified Investment Product trading account with another licensed person or exempt financial institution, paragraphs 6 to 14 shall still apply to the first-mentioned licensed person or exempt financial institution, as the case may be.

Validity of the Outcome of Customer Account Review

16 No licensed person or exempt financial institution shall allow a Customer to transact in a listed Specified Investment Product through the Customer's Specified Investment Product trading account after 3 years has expired from the date of the conduct of the Customer Account Review for the Customer concerned, until and unless –

- (a) the licensed person or exempt financial institution has checked and is satisfied that –
 - (i) the Customer has transacted in a listed Specified Investment Product through that account more than once during the preceding 3-year period; and
 - (ii) in every subsequent 3-year period, the Customer has transacted in a listed Specified Investment Product through that account more than once during that 3-year period; or

- (b) the licensed person or exempt financial institution has conducted a new Customer Account Review for the Customer concerned, by repeating the steps in paragraphs 6 to 14.

Joint Trading Accounts

16A Where two or more Customers intend to open a joint Specified Investment Product trading account to transact in a Specified Investment Product which is listed or quoted on a securities market or a futures market, the requirements to conduct the Customer Account Review prior to opening such account as provided in paragraphs 6 to 16 shall apply to the licensed person or exempt financial institution in respect of each of the Customers intending to open the joint Specified Investment Product trading account.

[SFA04-N12 (Amendment) 2011]

Customer Knowledge Assessment

17 A licensed person or an exempt financial institution shall ensure that it has been informed by the product manufacturer of a capital markets product which is neither listed nor quoted on a securities market or a futures market, as to whether the capital markets product is a Specified Investment Product, before offering that capital markets product. The licensed person or the exempt financial institution shall keep proper records of such information and shall accordingly convey this information to a Customer who intends to transact in that capital markets product.

18 Where the capital markets product is a Specified Investment Product that is neither listed nor quoted on a securities market or futures market (referred to as an “unlisted Specified Investment Product”), a licensed person or an exempt financial institution shall conduct a Customer Knowledge Assessment based on the criteria set out in Annex 3 to this Notice before transacting in the capital markets product for a Customer.

[SFA04-N12 (Amendment) 2011]

19 For the purpose of the Customer Knowledge Assessment, a licensed person or an exempt financial institution shall take into consideration information on a Customer’s educational qualifications, investment experience and work experience. Where a Customer does not provide

information on his educational qualifications, investment experience or work experience, the licensed person or the exempt financial institution shall deem the Customer not to possess knowledge or experience in the unlisted Specified Investment Product concerned.

20 A licensed person or an exempt financial institution shall highlight in writing to the Customer that any inaccurate or incomplete information provided by the Customer may affect the outcome of the Customer Knowledge Assessment.

21 Subject to paragraph 24, a licensed person or an exempt financial institution shall not allow a Customer to transact in an unlisted Specified Investment Product unless it is satisfied, on the basis of the outcome of the Customer Knowledge Assessment referred to in paragraph 18, that the client has knowledge or experience in the unlisted Specified Investment Product, as set out in Annex 3 to this Notice.

22 Notwithstanding a positive outcome of the Customer Knowledge Assessment, the licensed person or exempt financial institution who is also an exempt financial adviser shall offer to provide advice concerning the unlisted Specified Investment Product to the Customer. Where the Customer does not wish to receive advice, the licensed person or exempt financial institution shall document the decision of the Customer and highlight to the Customer in writing that it is the Customer's responsibility to ensure the suitability of the product selected. The licensed person or exempt financial institution shall also warn the Customer in writing that the Customer has chosen not to receive advice and will therefore not be able to rely on section 27 of the Financial Advisers Act (Cap.110) to file a civil claim in the event he alleges he has suffered a loss, and confirm in writing if the Customer wishes to proceed without advice.

Requirements where Customers are Assessed Not to Possess Knowledge or Experience in Unlisted Specified Investment Products

23 Where a licensed person or an exempt financial institution assesses a Customer not to possess the knowledge or experience in an unlisted Specified Investment Product pursuant to the Customer Knowledge Assessment, it shall inform the Customer of the outcome of the Customer Knowledge Assessment.

24 Where a Customer, after being informed of the outcome of the Customer Knowledge Assessment in accordance with paragraph 23, nevertheless intends to proceed with the transaction in the unlisted Specified Investment Product, –

- (a) the licensed person or exempt financial institution shall inform the Customer in writing of the outcome of the Customer Knowledge Assessment;
- (b) the licensed person or exempt financial institution shall inform the Customer that it is unable to proceed with the transaction in the unlisted Specified Investment Product on behalf of the Customer unless it is also an exempt financial adviser; and
- (c) where the licensed person or exempt financial institution is also an exempt financial adviser, it shall provide financial advisory services to the Customer in accordance with the standards set out in the Notice on Recommendations on Investment Products (Notice No. FAA-N16).

[SFA04-N12 (Amendment) 2011]

25 For avoidance of doubt, where a Customer of a licensed person or an exempt financial institution has previously undergone a Customer Knowledge Assessment with another licensed person or exempt financial institution, paragraphs 17 to 24 shall still apply in respect of every first transaction relating to an unlisted Specified Investment Product with any licensed person or an exempt financial institution.

Validity of the Outcome of Customer Knowledge Assessment

26 Where a Customer is assessed to have the knowledge or experience to transact in an unlisted Specified Investment Product, the licensed person or the exempt financial institution may allow the Customer to transact in such unlisted Specified Investment Product for a period of one year from the date of the assessment. After a year has elapsed, the licensed person or the exempt financial institution shall conduct a new Customer Knowledge Assessment on the Customer before it transacts on behalf of the Customer in any unlisted Specified Investment Product.

Joint Transactions in Unlisted Specified Investment Products

26A Where two or more Customers intend to jointly transact in an unlisted Specified Investment Product, the requirements to conduct the Customer Knowledge Assessment as provided in paragraphs 17 to 26 shall apply to the licensed person or exempt financial institution in respect of each of the Customers before transacting in such unlisted Specified Investment Product for the Customers.

[SFA04-N12 (Amendment) 2011]

Documentation and Record Keeping

27 A licensed person or an exempt financial institution shall obtain information on a Customer's profile, which includes but is not limited to information on the Customer's educational qualifications, investment experience or work experience, at the time when the contractual relationship is first established with the Customer. The licensed person or the exempt financial institution shall update the customer profile at least once a year.

28 A licensed person or an exempt financial institution shall document every Customer Account Review and every Customer Knowledge Assessment conducted for each Customer. Such documentation shall include the following:

- (a) information collected from a Customer on his educational qualification, work experience and investment experience;
- (b) an assessment of the Customer's knowledge and experience in derivatives or unlisted Specified Investment Products, as the case may be;
- (c) the outcome of the Customer Account Review or the Customer Knowledge Assessment; and
- (d) the approval of its senior management to open the Customer's Specified Investment Product trading account, where applicable.

29 A licensed person or an exempt financial institution shall maintain records of all communication between the licensed person or exempt financial

institution and the Customer relating to the transaction in any Specified Investment Product which is listed or quoted on a securities market or a futures market, including a record in the form of a file note or a tape recording of the telephone conversation.

Transition

30 A licensed person or an exempt financial institution shall conduct a Customer Account Review, including the procedures in paragraphs 6 to 14, on all its existing Customers before allowing any such Customer to commence or continue to transact in a Specified Investment Product which is listed or quoted on a securities market or a futures market.

[SFA04-N12 (Amendment) 2011]

30A With effect from 1 January 2012, a licensed person or exempt financial institution that has not conducted a Customer Account Review, in accordance with paragraphs 6 to 14, on an existing Customer, may –

- (a) allow the existing Customer concerned to continue holding on to his existing position in a listed Specified Investment Product; or
- (b) on the instructions of the existing Customer, execute a transaction or transactions on behalf of the existing Customer concerned to reduce his existing position in a listed Specified Investment Product,

but the licensed person or exempt financial institution shall not count such transactions referred to in sub-paragraph (b) towards “investment experience” for the purposes of conducting the Customer Account Review for the existing Customer concerned.

[SFA04-N12 (Amendment) 2011]

30B With effect from 1 January 2012, a licensed person or exempt financial institution that has not conducted a Customer Knowledge Assessment, in accordance with paragraphs 17 to 22, on an existing Customer who, immediately prior to 1 January 2012, has an existing position in an unlisted Specified Investment Product, may at the instructions of the existing Customer, execute a transaction or transactions on behalf of the existing Customer concerned to reduce his existing position in the unlisted Specified

Investment Product, but the licensed person or exempt financial institution shall not count such transactions towards “investment experience” for the purposes of conducting the Customer Knowledge Assessment for the Customer concerned.

[SFA04-N12 (Amendment) 2011]

31 This Notice shall take effect on 1 January 2012.

Note:

Under section 101(3) of the Act, any person who contravenes any direction issued by the Authority (which would include this Notice), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

*Notes on History of Amendments:

1. SFA04-N12 (Amendment) 2011 with effect from 1 January 2012

ANNEX 1 - EXCLUDED INVESTMENT PRODUCTS

Unless otherwise provided here, the terms used or referred to in this Annex shall have the same meanings assigned to them in section 2 of the Act or section 2 of the Financial Advisers Act (Cap. 110), where applicable.

“Excluded Investment Product” means:

- (a) any stocks or shares issued or proposed to be issued by a corporation or body unincorporate, other than where such corporation or body unincorporate is a collective investment scheme;
- (b) any unit of a share which represents ownership of the underlying share, where the underlying share is held on trust for the unit-holder by a custodian, and where –
 - (i) the units of shares have been previously issued, are listed for quotation or quoted on a securities exchange, and are traded on the exchange or an application has been or will be made for permission for the units of shares to be listed for quotation or quoted on a securities exchange or recognised securities exchange and the shares have been previously issued and are listed for quotation on a securities exchange or a recognised securities exchange; and
 - (ii) no additional consideration (other than administrative fees) is payable by the unit-holder in the event that he converts the unit of share into the underlying share;
- (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 unit in a collective investment scheme, such collective investment scheme being an arrangement:

- (i) that is a trust;
 - (ii) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and
 - (iii) all or any units of which are listed for quotation on a securities exchange;
- (f) any debenture other than:
- (i) asset-backed securities as defined in section 262(3) of the Act; or
 - (ii) structured notes as defined in regulation 2(1) of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005;
- (g) any contract or arrangement the effect of which is that one party agrees to exchange currency at an agreed rate of exchange with another party, where such currency exchange is effected immediately,

but does not include any product specified in items (a) to (g) above that is listed for quotation or quoted only on a securities market or a futures market that is not operated by an approved exchange.

ANNEX 2 – CRITERIA FOR THE ASSESSMENT OF A CUSTOMER ACCOUNT REVIEW

1. A Customer who satisfies any of the following may be assessed as possessing the knowledge or experience in derivatives for the purpose of opening of a Specified Investment Product trading account:

- (a) the Customer holds a diploma or has higher qualifications in accountancy, actuarial science, business/business administration/business management/business studies, capital markets, commerce, economics, finance, financial engineering, financial planning, computational finance and insurance;
 - (b) the Customer has a professional finance-related qualification¹;
 - (c) the Customer has transacted in Specified Investment Products which are listed or quoted on a securities market or a futures market at least 6 times in the preceding 3 years; or
 - (d) the Customer has a minimum of 3 consecutive years of working experience² in the past 10 years, in the development of, structuring of, management of, sale of, trading of, research on or analysis of investment products³, or the provision of training in investment products. Work experience in accountancy, actuarial science, treasury or financial risk management activities will also be considered relevant experience.
2. Where a Customer is assessed to not possess knowledge or experience in derivatives, but subsequently demonstrates sufficient understanding of the features and risks of derivatives through a learning module provided by an independent body as set out in the Practice Note on the Sale of Investment Products [SFA PN-01], the Customer may be deemed to possess the knowledge to transact in Specified Investment

¹ Examples of this would include the Chartered Financial Analyst Examination conducted by the CFA Institute, USA and the Association of Chartered Certified Accountants (ACCA) Qualifications.

² Such working experience would also include the provision of legal advice or possession of legal expertise on the relevant areas listed in limb (d).

³ As defined in section 2 of the Financial Advisers Act (Cap. 110).

Products which are listed or quoted on a securities market or a futures market.

[SFA04-N12 (Amendment) 2011]

ANNEX 3 – CRITERIA FOR THE SATISFACTION OF THE CUSTOMER KNOWLEDGE ASSESSMENT

1. A Customer who satisfies any of the following may be assessed as possessing the knowledge or experience in the unlisted Specified Investment Product for the purpose of the satisfaction of the Customer Knowledge Assessment in the Specified Investment Product concerned:

- (a) The Customer holds a diploma or has higher qualifications in accountancy, actuarial science, business/business administration/business management/business studies, capital markets, commerce, economics, finance, financial engineering, financial planning, computational finance and insurance;
- (b) The Customer has a professional finance-related qualification⁴;
- (c) The Customer has invested in the following unlisted Specified Investment Products:
 - (i) For transactions in collective investment schemes (referred to as “CIS”) and investment-linked life insurance policies (referred to as “ILPs”), the Customer has transacted in CIS or ILPs at least 6 times in the preceding 3 years; or
 - (ii) For transactions in Specified Investment Products which are neither listed nor quoted on a securities market or a futures market (excluding CIS and ILPs), the Customer has transacted in any Specified Investment Products which are neither listed nor quoted on a securities market or a futures market (excluding CIS and ILPs) at least 6 times in the preceding 3 years; or
- (d) The Customer has a minimum of 3 consecutive years of working experience⁵ in the past 10 years in the development of,

⁴ Examples of this would include the Chartered Financial Analyst Examination conducted by the CFA Institute, USA and the Association of Chartered Certified Accountants (ACCA) Qualifications.

⁵ Such working experience would also include the provision of legal advice or possession of legal expertise on the relevant areas listed in limb (d).

structuring of, management of, sale of, trading of, research on and analysis of investment products or the provision of training in investment products. Work experience in accountancy, actuarial science, treasury or financial risk management activities will also be considered relevant experience.

2. Where a Customer is assessed to not possess the knowledge or experience to understand an unlisted Specified Investment Product, but subsequently demonstrates sufficient understanding of the features and risks of that unlisted Specified Investment Product through a learning module provided by an independent body as set out in the Practice Note on Recommendations on Investment Products [FAA PN-02], the Customer may be deemed to possess the knowledge to trade in that unlisted Specified Investment Product.

[SFA04-N12 (Amendment) 2011]