

No. S 444

**SECURITIES AND FUTURES ACT
(CHAPTER 289)**

**SECURITIES AND FUTURES
(PROVISIONS FOR PERSONS AND MATTERS PREVIOUSLY
REGULATED UNDER COMMODITY TRADING ACT)
REGULATIONS 2007**

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In exercise of the powers conferred by section 342 of the Securities and Futures Act, the Monetary Authority of Singapore hereby makes the following Regulations:

PART I

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Securities and Futures (Provisions for Persons and Matters Previously Regulated under Commodity Trading Act) Regulations 2007 and shall come into operation on 27th August 2007.

Definitions

2. In these Regulations, unless the context otherwise requires —

“Board” means the International Enterprise Singapore Board established under section 3 of the International Enterprise Singapore Board Act (Cap. 143B);

“commodity futures contract” has the meaning given to that expression in the CTA;

“CTA” means the Commodity Trading Act (Cap. 48A) in force immediately before 27th February 2008;

“CTA Regulations” means the Commodity Trading Regulations 2001 (G.N. No. S 578/2001) in force immediately before 27th February 2008;

“qualifying corporation” means a corporation that is deemed under regulation 6(1) to be the holder of a capital markets services licence to trade in futures contracts.

Forms

3.—(1) The forms to be used for the purposes of these Regulations are those set out at <http://www.mas.gov.sg> (under “Regulations and Licensing”, “Securities, Futures and Fund Management”), and any reference in these Regulations to a numbered form shall be construed as a reference to the current version of the form bearing the corresponding number in that website.

(2) Any document required to be lodged with the Authority under these Regulations shall be lodged in the relevant form and in the manner specified in the website referred to in paragraph (1), or in such other manner as the Authority may specify from time to time.

(3) All forms used for the purposes of these Regulations shall be completed in the English language and in accordance with such directions as may be specified in the forms or by the Authority.

(4) 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.

PART II

EXCHANGES AND CLEARING HOUSES

Singapore Commodity Exchange Ltd

4.—(1) The corporation known as Singapore Commodity Exchange Ltd shall be deemed to have been recognised as a recognised market operator under section 8(2) of the Act with effect from 27th February 2008.

(2) Such recognition shall be subject to every condition or restriction imposed by the Board to which the corporation was subject immediately before 27th February 2008 as if the condition or restriction were imposed by the Authority under section 8(4) of the Act.

(3) The corporation shall also be deemed, with effect from 27th February 2008, to have notified the Authority of its intent to operate a clearing facility at least 60 business days prior to the commencement of operation of the clearing facility under section 49(1) of the Act.

(4) During the period between 27th February 2008 and 27th February 2009 (both dates inclusive), the corporation shall, if it complies with section 6 of the CTA, be deemed to have complied with section 37 of the Act.

(5) Paragraph (4) is subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing to the corporation.

Corporations specified in Schedule

5.—(1) A corporation specified in the Schedule shall, if it operates a commodity futures market within the meaning of section 2 of the CTA immediately before 27th February 2008 and makes an application under section 7(1)(a) or (b) or 14(1) of the Act to the Authority by 27th November 2007, be deemed to have been —

- (a) approved as an approved exchange under section 8(1) of the Act;
- (b) recognised as a recognised market operator under section 8(2) of the Act; or
- (c) exempted from the requirement to be an approved exchange or a recognised market operator under section 14(2) of the Act,

as the case may be, with effect from 27th February 2008 until the date on which the application is granted, refused or withdrawn.

- (2) The Authority may, with the consent of the applicant —
 - (a) treat an application under section 7(1)(a) of the Act as an application under section 7(1)(b) of the Act if it is of the opinion that the applicant would be more appropriately regulated as a recognised market operator; or
 - (b) treat an application under section 7(1)(b) of the Act as an application under section 7(1)(a) of the Act if it is of the opinion that the applicant would be more appropriately regulated as an approved exchange.

PART III

COMMODITY FUTURES BROKERS AND THEIR REPRESENTATIVES

Corporations holding only commodity futures broker's licence

6.—(1) A corporation that is licensed as a commodity futures broker under section 12 of the CTA immediately before 27th February 2008 shall, if —

- (a) it lodges with the Authority a notice in Form 1 not later than 27th November 2007;
- (b) it satisfies the Authority that it is a fit and proper person to hold a capital markets services licence to trade in futures contracts under section 86 of the Act by 27th February 2008;
- (c) it satisfies the Authority that all of its officers and substantial shareholders are fit and proper persons by 27th February 2008;
- (d) all moneys held by it on account of its customers immediately before 27th February 2008 and required to be dealt with in accordance with regulations made under section 30 of the CTA are held immediately before that date —

- (i) in an account maintained pursuant to those regulations with a financial institution; or
 - (ii) if the moneys are denominated in a foreign currency, in an account maintained with a custodian outside Singapore which is licensed, registered or authorised to conduct banking business in the country or territory where the account is maintained; and
- (e) it obtains by 27th February 2008 an acknowledgment from the financial institution or custodian with which it maintains that account, that—
- (i) all moneys deposited in that account are held on trust by the corporation for its customer and the financial institution or custodian cannot exercise any right of set-off against the moneys for any debt owed by the corporation; and
 - (ii) that account is designated as a trust account, or a customer's account, which is distinguished and maintained separately from any account in which the corporation deposits its own moneys,

be deemed to be the holder of a capital markets services licence to trade in futures contracts with effect from 27th February 2008.

(2) During the period between 27th February 2008 and 27th February 2011 (both dates inclusive), a qualifying corporation shall be deemed to have complied with Part III (other than regulation 11) of the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations (Rg 13) if it complies with regulations 17(1) and (2) and 18(1) to (3) of the CTA Regulations (as modified in accordance with paragraph (3)) as if those provisions continue to apply to it.

(3) For the purposes of paragraph (2), regulation 18(3) of the CTA Regulations shall be modified as follows:

- (a) the reference to the Board shall be read as the Authority;
- (b) the reference to the commodity broker, commodity futures broker or spot commodity broker, or a director thereof shall be read as a director of the qualifying corporation;
- (c) the reference to 30 days after the end of each quarter shall be read as 14 days after the end of each quarter or such longer period as the Authority may allow.

(4) Section 329 of the Act applies to a statement lodged with the Authority under the modified regulation 18(3) under paragraph (2).

(5) Paragraph (2) is subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing to the qualifying corporation.

(6) Regulation 11 of the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations applies in relation to a qualifying corporation referred to in paragraph (2) subject to the following modifications:

- (a) a reference to the holder of a licence under regulation 8(1)(b) or (c) shall be read as a reference to the qualifying corporation;
- (b) a reference to \$2 million shall be read as \$400,000;
- (c) a reference to adjusted net capital shall be read as adjusted net capital as defined in regulation 4 of the CTA Regulations;
- (d) a reference to adjusted net capital requirement shall be read as 12.5% of the amount of customer funds required to be segregated under the CTA Regulations;
- (e) a reference to the statement referred to in regulation 27(2) of the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations (Rg 13) shall be read as the statement referred to in regulation 18(1) of the CTA Regulations.

(7) During the period between 27th February 2008 and 27th February 2011 (both dates inclusive), the qualifying corporation referred to in paragraph (2) shall be exempt from the requirements under paragraphs (1) to (7), and sub-paragraphs (b) to (e) of paragraph (9), of regulation 27 of the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations.

(8) In paragraph (1)(d), “financial institution” means —

- (a) a bank licensed under the Banking Act (Cap. 19);
- (b) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186); or
- (c) a finance company licensed under the Finance Companies Act (Cap. 108).

Representatives of corporations holding only commodity futures broker’s licence

7.—(1) A person who is licensed as a commodity futures broker’s representative under section 13 of the CTA in relation to a

qualifying corporation immediately before 27th February 2008 shall, if he —

- (a) lodges with the Authority a notice in Form 2 not later than 27th November 2007;
- (b) satisfies the Authority that he is a fit and proper person to hold a representative's licence in respect of trading in futures contracts under section 87 of the Act by 27th February 2008; and
- (c) complies with the requirements in the Notice on Minimum Entry and Examination Requirements for Representatives of Holders of Capital Markets Services Licence and Exempt Financial Institutions under the SFA [Notice No. SFA 04-N06] issued by the Authority that are applicable to a representative in respect of trading in futures contracts by 27th February 2008,

be deemed to be the holder of a representative's licence to act as a representative of that corporation in respect of trading in futures contracts under section 87 of the Act with effect from 27th February 2008.

(2) A person who, immediately before 27th February 2008 —

- (a) is a representative of a qualifying corporation in respect of trading in commodity futures contracts; but
- (b) does not hold a commodity futures broker's representative's licence under section 13 of the CTA in relation to that corporation,

shall, if the person makes an application under section 84(1) of the Act by 27th November 2007 to be the holder of a representative's licence in respect of trading in futures contracts, be deemed to be the holder of a representative's licence to act as a representative of the qualifying corporation in respect of trading in futures contracts under section 87 of the Act with effect from 27th February 2008 until the date on which the application is granted, refused or withdrawn.

Representatives of corporations holding both commodity futures broker's licence and capital markets services licence

8. A person who, immediately before 27th February 2008 —

- (a) is licensed as a commodity futures broker's representative under section 13 of the CTA in relation to a corporation which, immediately before that date, is the holder of a commodity futures broker's licence under the CTA and a capital markets services licence; and

- (b) is not the holder of a representative's licence under section 87 of the Act,

shall, if he —

- (i) lodges with the Authority a notice in Form 2 not later than 27th November 2007;
- (ii) satisfies the Authority that he is a fit and proper person to hold the licence by 27th February 2008; and
- (iii) complies with the requirements in the Notice on Minimum Entry and Examination Requirements for Representatives of Holders of Capital Markets Services Licence and Exempt Financial Institutions under the SFA [Notice No. SFA 04-N06] issued by the Authority that are applicable to a representative in respect of trading in futures contracts by 27th February 2008,

be deemed to be the holder of a representative's licence to act as a representative of that corporation in respect of trading in futures contracts under section 87 of the Act with effect from 27th February 2008.

Trust accounts of qualifying corporations

9. An account which is maintained by a qualifying corporation in accordance with regulations made under section 30 of the CTA and which remains open on 27th February 2008 shall be deemed with effect from that date to be a trust account maintained by the qualifying corporation for the purposes of Division 2 of Part III of the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10) (in particular regulations 17 and 18 of those Regulations).

Inquiries under section 19 of CTA

10.—(1) This regulation applies if an inquiry under section 19 of the CTA is commenced before 27th February 2008 into an allegation against —

- (a) a commodity futures broker which is a qualifying corporation; or
- (b) a commodity futures broker's representative who is deemed to be the holder of a representative's licence under regulation 7 or 8 or whose application under regulation 7 to be the holder of a representative's licence has been granted by the Authority.

(2) If, after conducting the inquiry, the Board finds that the allegation has been proved, the finding shall be treated as a ground on which —

- (a) the Authority may suspend or revoke the capital markets services licence or representative's licence, as the case may be, under section 95 of the Act; or
- (b) reprimand the qualifying corporation or holder of a representative's licence, as the case may be, under section 334 of the Act,

and sections 95 and 334 of the Act shall apply accordingly.

PART IV

FOREIGN COMPANIES TRADING UNDER ARRANGEMENTS WITH RELATED CORPORATIONS

Foreign companies trading in commodity futures contracts under arrangements with related corporations

11.—(1) This regulation applies to a foreign company which, immediately before 27th February 2008, is carrying on a trade in commodity futures contracts (not being futures contracts for the purposes of Part I of the First Schedule to the Act or any other provision of the Act) under an arrangement between that foreign company (on the one hand) and its related corporation (on the other hand) which —

- (a) holds a capital markets services licence;
- (b) is exempted under section 99(1)(a), (b), (c) or (d) of the Act from holding such licence; or
- (c) is a qualifying corporation

(2) The foreign company shall be exempt from holding a capital markets services licence to carry on the business of trading in futures contracts in respect of the commodity futures contracts referred to in paragraph (1), when carrying on a trade in those commodity futures contracts under the arrangement referred to in paragraph (1), if the foreign company and its related corporation apply to the Authority, at any time before 27th February 2008, for approval of the arrangement under paragraph 9 of the Third Schedule to the Act.

(3) The exemption shall be effective from 27th February 2008 until the date on which the application is granted, refused or withdrawn.

Foreign companies trading under approved arrangements with related corporations

12.—(1) This regulation applies to a foreign company which, immediately before 27th February 2008, is carrying on a trade in

futures contracts (not being commodity futures contracts) under an arrangement with its related corporation, being an arrangement which has been approved by the Authority under paragraph 9 of the Third Schedule to the Act.

(2) The foreign company shall be exempt from holding a capital markets services licence to carry on the business of trading in futures contracts in respect of commodity futures contracts, when carrying on a trade in commodity futures contracts under the arrangement referred to in paragraph(1).

(3) The exemption shall be effective from 27th February 2008 until the date on which the approval of the arrangement is withdrawn.

THE SCHEDULE

Regulation 5(1)

CORPORATIONS OPERATING COMMODITY FUTURES MARKETS

1. The London Metal Exchange Limited
2. Dubai Mercantile Exchange.

Made this 22nd day of August 2007.

HENG SWEE KEAT
Managing Director,
Monetary Authority of
Singapore.

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