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SECURITIES AND FUTURES ACT  
(CHAPTER 289)

SECURITIES AND FUTURES  
(APPROVED HOLDING COMPANIES)  
REGULATIONS 2005

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In exercise of the powers conferred by sections 81V (2), 81X, 81ZA (1), 81ZB (1), 81ZD (2) (a), 81ZF (4) and (5), 81ZJ (2), 81ZK and 341 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 (Approved Holding Companies) Regulations 2005 and shall come into operation on 1st July 2005.

**Definition**

2. In these Regulations, unless the context otherwise requires, “annual report” means the audited profit and loss accounts, audited balance-sheet and auditors’ report, by whatever name called, of an approved holding company.

**Forms**

3.—(1) The forms to be used for the purposes of Part IIIA of the Act and these Regulations are those set out at the Authority’s Internet website at <http://www.mas.gov.sg> (under “Legislation and Notices”, “Securities and Futures”), 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 which is displayed at that website.

(2) Any document required to be lodged with the Authority under any provision of Part IIIA of the Act or 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 Part IIIA of the Act and these Regulations shall 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 —

- (a) it is not completed in accordance with this regulation; or
- (b) it is not accompanied by the relevant fee referred to in regulation 4.

(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.

### **Fees**

**4.**—(1) The fees specified in the Schedule shall be payable to the Authority for the purposes specified therein, and subject to section 81X (2), shall not be refundable.

(2) Payment of fees may be made through such electronic funds transfer system as the Authority may designate from time to time, whereby payment may be effected by directing the transfer of funds electronically from the bank account of the payer to a bank account designated by the Authority.

### **Keeping of books and other information**

**5.** Every approved holding company shall ensure that all relevant books and other information as may be required by the Authority for the purposes of the Act are kept for a minimum of 6 years.

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PART II  
APPROVAL OF HOLDING COMPANIES

**Application for approval**

6. For the purposes of section 81V (2) of the Act, an application for approval as an approved holding company under section 81V (1) of the Act shall be made in Form 1 and shall be lodged with the Authority together with —

- (a) Forms 2 and 3; and
- (b) any relevant annex and information specified in those Forms.

**Criteria to be taken into account by Authority**

7. The Authority may approve an application made under section 81V (1) of the Act if the Authority is satisfied that —

- (a) the applicant is fit and proper to be approved as an approved holding company;
- (b) having regard to the applicant's likely influence over the approved exchange or designated clearing house of which the applicant is proposed to be the holding company, the approved exchange or designated clearing house will or is conducting and will continue to conduct its business prudently in compliance with the provisions of the Act; and
- (c) it would not be contrary to the interests of the public to do so.

PART III  
REGULATION OF  
APPROVED HOLDING COMPANIES

**Obligation to notify Authority of certain matters**

8.—(1) For the purposes of section 81ZA (1) of the Act, an approved holding company shall, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of such circumstance:

- (a) any civil or criminal legal proceeding instituted against the approved holding company, whether in Singapore or elsewhere;

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- (b) any disciplinary action taken against the approved holding company by any regulatory authority, whether in Singapore or elsewhere, other than the Authority;
  - (c) any significant change to the regulatory requirements imposed on the approved holding company by any regulatory authority, whether in Singapore or elsewhere, other than the Authority.

(2) Where a circumstance referred to in paragraph (1) (a) or (b) has occurred, the approved holding company shall, in addition to the notification required under paragraph (1), within 14 days of the occurrence of the circumstance or such longer period as the Authority may permit, submit a report to the Authority of the circumstances relating to the occurrence, the remedial actions taken at the time of the occurrence, and the subsequent follow-up actions that the approved holding company has taken or intends to take.

### **Obligation to submit periodic reports**

9.—(1) For the purposes of section 81ZB (1) of the Act, an approved holding company shall submit to the Authority —

- (a) within 3 months after the end of its financial year or such longer period as the Authority may permit, a copy of its —
  - (i) annual report and directors' report prepared in accordance with the provisions of the Companies Act (Cap. 50); and
  - (ii) auditors' long form report;
- (b) within 45 days after the end of each of the first 3 quarters of its financial year or such longer period as the Authority may permit, a copy of its —
  - (i) profit and loss accounts; and
  - (ii) balance-sheet,

for the preceding quarter, in such form as may be approved by the Authority;

- (c) within 3 months after the end of its financial year or such longer period as the Authority may permit, a report on how the approved holding company has discharged its responsibilities under the Act or these Regulations during that financial year;

(d) a report relating to the business of the approved holding company, at such time or on such periodic basis as may be specified by the Authority; and

(e) such other report as the Authority may require for the proper administration of the Act, at such time or on such periodic basis as may be required by the Authority.

(2) The auditors' long form report referred to in paragraph (1) (a) (ii) shall include the findings and recommendations of the auditors, if any, on —

(a) the internal controls of the approved holding company; and

(b) the non-compliance with any —

(i) provision of the Act;

(ii) direction issued by the Authority under the Act; or

(iii) other relevant laws or regulations.

### **Exceptions to obligation to maintain confidentiality**

**10.—**(1) For the purposes of section 81ZD (2) (a) of the Act, section 81ZD (1) of the Act shall not apply to the disclosure of user information by an approved holding company or its officers or employees for the following purposes or in the following circumstances:

(a) the disclosure of user information is necessary for the making of a complaint or report under any written law for an offence alleged or suspected to have been committed under such written law;

(b) the disclosure of user information is permitted for such purpose specified in writing by the user, or where the user is deceased, by his appointed personal representative;

(c) the user information disclosed is already in the public domain;

(d) the disclosure of user information is made in connection with —

(i) the outsourcing or proposed outsourcing of any function of the approved holding company to a third party;

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- (ii) the engagement or potential engagement of a third party by the approved holding company to create, install or maintain systems of the approved holding company; or
  - (iii) the appointment or engagement of an auditor, a lawyer, a consultant or other professional by the approved holding company under a contract for service;
- (e) the disclosure of user information is necessary in —
- (i) an application for a grant of probate or letters of administration or the resealing thereof in relation to the estate of a deceased user; or
  - (ii) the administration of the estate of a deceased user, including such disclosure as may be required by the Public Trustee or the Commissioner of Estate Duties; or
- (f) the disclosure of user information is made in connection with —
- (i) in the case where the user is an individual, the bankruptcy of a user; or
  - (ii) in the case where the user is a body corporate, the winding up or receivership of a user.
- (2) Where user information is disclosed under sub-paragraph (d) of paragraph (1), the approved holding company shall —
- (a) maintain a record of —
    - (i) the circumstances relating to the disclosure of user information referred to in that sub-paragraph; and
    - (ii) the particulars of —
      - (A) in the case of the disclosure of information under sub-paragraph (d) (i), the outsourcing of the function of the approved holding company;
      - (B) in the case of the disclosure of information under sub-paragraph (d) (ii), the engagement of the third party; and
      - (C) in the case of the disclosure of information under sub-paragraph (d) (iii), the appointment or engagement of the auditor, lawyer, consultant or other professional,

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and make that record available for inspection by the Authority;

- (b) disclose the user information only insofar as this is necessary for the relevant purpose; and
- (c) take reasonable steps to ensure that user information disclosed is used by the person to whom the disclosure is made strictly for the relevant purpose, and that the user information is not disclosed by that person to any other person except with the consent of the approved holding company.

(3) Where disclosure of user information is permitted to be made for any purpose or in any circumstance under paragraph (1) to a body corporate, the user information may be disclosed only to those officers of the body corporate to whom the disclosure is necessary for the relevant purpose.

(4) In paragraphs (2) and (3), “relevant purpose” means —

- (a) in the case of the disclosure of information under paragraph (1) (d) (i), facilitating the outsourcing of the function of the approved holding company;
- (b) in the case of the disclosure of information under paragraph (1) (d) (ii), facilitating the engagement of the third party; and
- (c) in the case of the disclosure of information under paragraph (1) (d) (iii), facilitating the appointment or engagement of the auditor, lawyer, consultant or other professional.

### **Business continuity plan**

**11.—**(1) An approved holding company shall maintain at all times a plan of action (referred to in this regulation as a business continuity plan) setting out the procedures and establishing the systems necessary to restore orderly and expeditious operations of the approved holding company, in the event of any disruption to the operations of the approved holding company.

(2) An approved holding company shall review the procedures and systems referred to in paragraph (1) on such regular basis as may be specified in the business continuity plan.

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(3) An approved holding company shall immediately notify the Authority of any activation of its business continuity plan and of any action taken or intended to be taken to restore its operations.

(4) An approved holding company shall, within 14 days or such longer period as may be permitted by the Authority, inform the Authority of any material change to the business continuity plan, and shall, at the request of the Authority submit a copy of the new plan to the Authority.

### **Application and criteria for approval to acquire substantial shareholding**

**12.**—(1) Any person applying for approval under section 81ZE (1) or (2) of the Act shall submit to the Authority a written application that sets out —

- (a) the name of the applicant;
- (b) in the case where the applicant is a corporation —
  - (i) its place of incorporation;
  - (ii) its substantial shareholders;
  - (iii) its directors and chief executive officer; and
  - (iv) its principal business;
- (c) in the case where the applicant is a natural person —
  - (i) his nationality;
  - (ii) his principal occupation; and
  - (iii) his directorships;
- (d) all the corporations in which the applicant has a substantial shareholding;
- (e) the percentage of shareholding and voting power that the applicant has in the approved holding company;
- (f) the percentage of shareholding and voting power the applicant is seeking to have in the approved holding company;
- (g) the reasons for making the application;
- (h) the mode and structure, as appropriate, under which the increase in shareholding would be carried out;
- (i) whether the applicant will seek representation on the board of directors of the approved holding company; and

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(j) any other information that may facilitate the determination of the Authority as to whether the applicant is a fit and proper person for the purposes of paragraph (3) (a).

(2) The Authority may require the applicant to furnish it with such information or documents as the Authority considers necessary in relation to the application and the applicant shall furnish such information or documents as required by the Authority.

(3) The Authority may approve an application made under section 81ZE (1) or (2) of the Act if the Authority is satisfied that —

- (a) the applicant is a fit and proper person to be a substantial shareholder, or a 12% controller or 20% controller within the meaning of section 81ZE (3) of the Act (as the case may be) of the approved holding company;
- (b) having regard to the applicant's likely influence, the approved holding company will or will continue to conduct its business prudently and in compliance with the provisions of the Act; and
- (c) it would not be contrary to the interests of the public to do so.

#### **Application for approval of chairman, chief executive officer, director and key persons**

**13.**—(1) For the purposes of section 81ZF (4) of the Act, an approved holding company may apply for approval under section 81ZF (2) or (3) of the Act by submitting Form 4 to the Authority.

(2) The Authority may require the approved holding company to furnish it with such information or documents as the Authority considers necessary in relation to the application referred to in paragraph (1) and the approved holding company shall furnish such information or documents as required by the Authority.

#### **Criteria for approval of chairman, chief executive officer, director and key persons**

**14.** For the purposes of section 81ZF (5) of the Act, the Authority may have regard to the following matters in determining whether to approve or refuse to approve the appointment of a person under section 81ZF (2) or (3) of the Act:

- (a) whether the person is fit and proper to be so appointed;

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- (b) whether the appointment of the person would be consistent with any applicable written law relating to the qualifications for the position or the requirements for the composition of the board of directors or any committee of the approved holding company;
  - (c) whether it would be contrary to the interests of the public to approve the appointment of the person.

**Criteria to determine failure to discharge duties or functions by officers**

**15.** For the purposes of section 81ZJ (2) of the Act, the Authority may, in determining whether a chairman, chief executive officer or director, or any officer who is a person stated in a notice referred to in section 81ZF (3) of the Act, of an approved holding company has failed to discharge the duties or functions of his office, take into consideration whether that person has taken reasonable steps to discharge the following duties:

- (a) ensure the proper functioning of the approved holding company;
- (b) ensure the compliance of the approved holding company with any relevant laws or regulations of any jurisdiction in which it is incorporated or in which it operates;
- (c) set out and ensure compliance with written policies on all operational areas of the approved holding company, including its financial policies, accounting and internal controls, internal auditing and compliance with all laws and rules governing the operations of the approved holding company;
- (d) identify, monitor and address the risks associated with the business activities of the approved holding company;
- (e) ensure that the business activities of the approved holding company are subject to adequate internal audit;
- (f) oversee the financial undertakings or exposure of the approved holding company to risks of any nature, by setting out proper delegation limits and risk management controls; and
- (g) ensure —
  - (i) that the approved holding company maintains written records of the steps taken by it to monitor compliance

- with its policies, the limits on discretionary powers and its accounting and operating procedures; and
- (ii) that every report, return or statement submitted by the approved holding company to the Authority is complete and accurate.

## PART IV OFFENCES

### Offences

**16.**—(1) Unless otherwise provided in these Regulations, any corporation which contravenes regulation 5, 8 (2), 10 (2), 11 or 13 (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(2) Section 333 (1) of the Act shall not apply to any offence referred to in paragraph (1).

### THE SCHEDULE

Regulation 4

#### FEES

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| 1. For every application for approval as an approved holding company under section 81V (2) of the Act   | \$4,000   |
| 2. Annual fee for Singapore Exchange Limited under section 81X (1) of the Act   | \$250,000 |
| 3. For every application for approval to acquire substantial shareholding in an approved holding company under section 81ZE (1) or (2) of the Act | \$500.    |

Made this 8th day of June 2005.

**HENG SWEE KEAT**  
*Managing Director,*  
*Monetary Authority of Singapore.*