

**DRAFT FINANCIAL ADVISERS (AMENDMENT)
REGULATIONS**

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No. S 000 -

FINANCIAL ADVISERS ACT
(CHAPTER 110)

FINANCIAL ADVISERS (AMENDMENT) REGULATIONS
2005

In exercise of the powers conferred by sections 8, 23, 27, 100 and 104 of the Financial Advisers Act, the Monetary Authority of Singapore hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Financial Advisers (Amendment) Regulations 2005 and shall come into operation on [*commencement date*].

Amendment of regulation 2

2. Regulation 2(1) of the Financial Advisers Regulations 2002 (G.N. No. S 462/2002) (referred to in these Regulations as the principal Regulations) is amended—

(a) by deleting the definition of “accredited investor” and substituting the following definition:

“accredited investor” means –

(i) an individual –

(A) whose net personal assets exceed \$2 million in value (or its equivalent in a foreign currency) or such other amount as may be specified by the Authority by notice in writing in place of that first amount; or

(B) whose income in the preceding 12 months is not less than \$300,000 (or its equivalent in a foreign currency) or such other amount as may be specified by the Authority by notice in writing in place of that first amount;

(ii) a corporation with net assets exceeding \$10 million in value (or its equivalent in a foreign currency) or such other amount as may be specified by the Authority by notice in writing in place of that first amount, as determined by –

- (A) where the corporation is required to prepare audited accounts regularly, the most recent audited balance-sheet of the corporation; or
 - (B) where the corporation is not required to prepare audited accounts regularly, a balance sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance sheet, which is a date within the preceding 12 months; or
 - (iii) such other person as the Authority may specify by notice in writing;
- (b) by inserting, immediately after the definition of “client’s money or property”, the following definition:

“expert investor” means –

- (i) a person whose business involves the acquisition and the disposal or holding of capital markets products, whether as principal or agent; or
 - (ii) such other person as the Authority may specify by notice in writing;
- (c) by inserting, immediately after the definition of “guideline issued by the Authority”, the following definition:

“institutional investor” means –

- (i) a bank that is licensed under the Banking Act (Cap. 19);
- (ii) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
- (iii) a finance company that is licensed under the Finance Companies Act (Cap. 108);
- (iv) a company or society registered under the Insurance Act (Cap. 142) as an insurer;
- (v) a company registered under the Trust Companies Act (Cap. 336);
- (vi) the Government;
- (vii) a statutory body established under any Act

- in Singapore;
- (viii) a pension fund or collective investment scheme;
 - (ix) the holder of a capital markets services licence for -
 - (A) dealing in securities;
 - (B) fund management;
 - (C) providing custodial services for securities;
 - (D) securities financing; or
 - (E) trading in futures contracts;
 - (x) a person (other than an individual) who carries on the business of dealing in bonds with accredited investors or expert investors; or
 - (xi) such other person as the Authority may specify by notice in writing.

Amendment of regulation 4

3. Regulation 4 of the principal Regulations is deleted and the following section substituted therefor:

“Forms

4. —(1) The forms to be used for the purposes of these Regulations are those set out at [*state the website address*], 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) Where any provision of the Act or these Regulations provides for the lodgment of a document with the Authority, that document shall be lodged with the Authority 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 form or by the Authority.
 - (4) The Authority may refuse to accept any form that is not completed or lodged in accordance with this regulation or

not accompanied by the relevant fee referred to in regulation 6.”.

- (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.”.

Amendment of regulation 7

4. Regulation 7 of the principal Regulations is amended by deleting the words “as specified in the Form” and substituting the words “as may be specified in the Form or by the Authority from time to time”.

Amendment of regulation 15

5. Regulation 15 of the principal Regulations is amended –

- (a) by inserting, immediately after the words “advising others,” in paragraph (1)(a)(i), the words “other than in the manner specified in sub-sub-paragraph (ii),”; and
- (b) by deleting the words “issuing or promulgating analyses or reports” at the beginning of sub-sub-paragraph (ii) of paragraph (1)(a) and the words “advising others by issuing research analyses or research reports”.

Amendment of regulation 23

6. Regulation 23 of the principal Regulations is deleted and the following regulation substituted therefor:

“Preparation and lodgment of accounts

23. – For the purposes of section 45(1) and 48(1) of the Act, a licensed financial adviser shall prepare and lodge with the Authority –

- (a) statements in Form 14, 15 and 16, where applicable;
- (b) by hand or by post, a true and fair profit and loss account and a balance-sheet made up to the last day of its financial year in accordance with the provisions of the Companies Act (Cap. 50), where applicable, together with –
- (i) the auditor’s report in Form 17 which shall contain the documents necessary for the due completion of the Form;
- (ii) copies of the statements referred to in paragraph (a).”

Deletion of regulation 24

7. Regulation 24 of the principal Regulations is deleted.

Amendment of regulation 27

8. Regulation 27 of the principal Regulations is amended –

(a) by deleting the words “giving advice, or in issuing or promulgating analyses or reports” in the 2nd line of paragraph (1)(d) and substituting the words “giving advice in Singapore, either directly or through publications or writings or by issuing or promulgating research analyses or research reports”;

(b) by deleting the word “or” at the end of paragraph (1)(c) and the full-stop at the end of paragraph (1)(d), and by inserting at the end of paragraph (1)(d) the words “; or”, and by inserting immediately thereafter, the following sub-paragraph:

“(e) a person who provides all or any type of financial advisory service to an institutional investor.”; and

(c) by inserting, immediately after paragraph (3), the following paragraph:

“(3A) A person otherwise exempted under paragraph (1)(d) shall not be, or shall cease to be, so exempt if –

(a) the person has not commenced business in accordance with sub-paragraph (1)(d) within 6 months from the date of commencement of business as specified in the notice that the person has lodged with the Authority in accordance with regulation 37(2);

(b) the person has ceased to carry on business in accordance with sub-paragraph (1)(d), and has not resumed business in the same regulated activity in accordance with the same sub-paragraph, within a continuous period of 6 months from the date of cessation.”;

(d) by deleting the words “or (d)” in paragraphs (5), (6) and (7) and substituting in each case the words “, (d) or (e)”.

New regulation 27B

9. The principal Regulations is amended by inserting, immediately after regulation 27A, the following regulation:

“Exemption for advising institutional investor, related corporation or connected person

27B. –(1) A licensee or a financial adviser which is exempt from holding a financial adviser’s licence under section 23(1)(a), (b), (c), (d) or (e) of the Act (referred to in this regulation as exempt financial adviser) shall be exempt from sections 25 to 29, 32, 33, 34 and 36 of the Act and regulations 37 and 38 when providing any financial advisory service in respect of any investment product to –

- (a) an institutional investor;
- (b) a related corporation of that licensee or exempt financial adviser, as the case may be; or
- (c) a person that is connected to that licensee or exempt financial adviser, as the case may be.

(2) A representative of a licensee or exempt financial adviser referred to in paragraph (1) shall be exempt from section 25, 26, 27, 29, 33, 34 and 36 of the Act in respect of his carrying out of the activity referred to in paragraph (1).

Amendment of regulation 28

10. Regulation 28(1) of the principal Regulations is amended by deleting sub-paragraph (a) and substituting the following sub-paragraph:

“(a) an expert investor; or”.

Deletion of regulations 30 and 32

11. Regulations 30 and 32 of the principal Regulations are deleted.

Amendment of regulation 33

12. Regulation 33 of the principal Regulations is deleted and the following regulation substituted therefor:

“Exemption from section 25 of the Act for advising certain persons

33. –(1) Section 25 of the Act shall not apply to a licensee, an exempt financial adviser, or any of its representatives when providing any financial advisory service in respect of –

- (a) any investment product to an accredited investor; or
- (b) any capital markets product to an expert investor.

(2) A licensee, exempt financial adviser, or representative who is exempt in the manner and under the circumstances

specified in paragraph (1) shall disclose such exemption as may be applicable to him to the accredited investor or expert investor, as the case may be, unless the accredited investor or expert investor is –

- (i) an institutional investor;
- (ii) a related corporation of the licensee or exempt financial adviser, as the case may be; or
- (iii) a person that is connected to the licensee or exempt financial adviser, as the case may be.

(3) Any licensee, exempt financial adviser, or representative of a licensee or exempt financial adviser who fails to comply with paragraph (2) shall be guilty of an offence.

Amendment of regulation 34

13. Regulation 34 of the principal Regulations is amended –

(a) by deleting sub-sub-paragraph (i) of paragraph (1)(b) and substituting the following sub-sub-paragraph:

“(i) an expert investor; or”;

(b) by inserting, immediately after paragraph (1), the following paragraphs:

“(2) A licensee, exempt financial adviser, or representative who is exempt in the manner and under the circumstances specified in paragraph (1) shall disclose such exemption as may be applicable to him to the accredited investor or expert investor, as the case may be, unless the accredited investor or expert investor is –

- (i) an institutional investor;
- (ii) a related corporation of the licensee or exempt financial adviser, as the case may be; or
- (iii) a person that is connected to the licensee or exempt financial adviser, as the case may be.

(3) Any licensee, exempt financial adviser, or representative of a licensee or exempt financial adviser who fails to comply with paragraph (2) shall be guilty of an offence.

(4) Section 27 of the Act shall not apply to a licensee, an exempt financial adviser, or any of its representatives when making a recommendation other than in the manner specified in paragraph (1), in respect of any investment product –

- (a) to the public or to a section of the public;
- (b) which would not be regarded by a reasonable person within the public or a section of the public, as the case may be, as a recommendation that has taken into account his specific investment objectives, financial situation or particular needs; and
- (c) which is accompanied by a prominent written disclaimer stating that –
 - (i) the recommendation is intended for general circulation;
 - (ii) the recommendation does not take into account the specific investment objectives, financial situation or particular needs of any particular person; and
 - (iii) advice should be sought from a financial adviser regarding the suitability of the product, taking into account the specific investment objectives, financial situation or particular needs of the person to whom the recommendation is made before a commitment to purchase any investment product is made.”.

Amendment of regulation 35

14. Regulation 35 of the principal Regulations is amended –

- (a) by re-numbering the regulation as paragraph (1) of regulation 35;
- (b) by deleting sub-sub-paragraph (i) of paragraph (1)(b) and substituting the following sub-sub-paragraph:
 - “(i) an expert investor; or”;
- (c) by inserting, immediately after paragraph (1), the following paragraphs:
 - “(2) A licensee, exempt financial adviser, or representative who is exempt in the manner and under the circumstances specified in paragraph (1) shall disclose such exemption as may be applicable to him to the accredited investor or expert investor, as the case may be, unless the accredited investor or expert investor is –
 - (i) an institutional investor;

- (ii) a related corporation of the licensee or exempt financial adviser, as the case may be; or
 - (iii) a person that is connected to the licensee or exempt financial adviser, as the case may be.
- (3) Any licensee, exempt financial adviser, or representative of a licensee or exempt financial adviser that fails to comply with paragraph (2) shall be guilty of an offence.”.

New regulation 35A

15. The principal Regulations is amended by inserting, immediately after regulation 35, the following regulation:

“Exemption from sections 25, 26, 27, etc for advising overseas investors

35A. –(1) Sections 25 to 29, 32 to 34 and 36 of the Act shall not apply to a licensed financial adviser or an exempt financial adviser when providing any financial advisory service to any person outside Singapore who is –

- (a) not a citizen of Singapore;
- (b) not a permanent resident of Singapore; and
- (c) not a person who is wholly or partly dependent on the person referred to in sub-paragraph (a) or (b).

(2) Sections 25 to 27, 29, 33, 34 and 36 of the Act shall not apply to a representative of a licensed financial adviser or exempt financial adviser when carrying out the activity referred to in paragraph (1) as representative of the licensed financial adviser or exempt financial adviser, as the case may be.”.

Amendment of First Schedule

16. The First Schedule to the principal Regulations is deleted.

Made this day of 2005.

KOH YONG GUAN
Managing Director,
Monetary Authority of Singapore.

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