

DRAFT AMENDMENTS TO SECTION 2 OF THE SFA

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SECURITIES AND FUTURES ACT

(CHAPTER 289)

PART I

PRELIMINARY

[.....]

Short title

1. This Act may be cited as the Securities and Futures Act.

Interpretation

2. —(1) In this Act, unless the context otherwise requires —

“administering a designated benchmark” means –

- (a) controlling the development or review of the definition, or the methodology for the determination of a designated benchmark;
- (b) administering the arrangements for determining a designated benchmark;
- (c) collecting, analysing or processing information or expressions of opinion for the purpose of determining a designated benchmark;
- (d) determining a designated benchmark through the application of a formula or other methods of calculation to information or expressions of opinion provided for that purpose; or
- (e) monitoring and conducting surveillance of information or expressions of opinion provided for the purpose of determining a designated benchmark;

but does not include acts of or reasonably necessary for providing information in relation to a designated benchmark

“administering a financial benchmark” means –

- (a) controlling the development or review of the definition of a financial benchmark or the methodology for the determination of a financial benchmark;
- (b) administering the arrangements for determining a financial benchmark;
- (c) collecting, analysing or processing information or expressions of opinion for the purpose of determining a financial benchmark;

(d) determining a financial benchmark through the application of a formula or other methods of calculation to information or expressions of opinion provided for that purpose; or

(e) monitoring and conducting surveillance of information or expressions of opinion provided for the determination of a financial benchmark;

but does not include acts of or reasonably necessary for providing information in relation to a financial benchmark.

“advising on corporate finance” has the meaning given to it in the Second Schedule;

[.....]

“auditor” means a public accountant who is registered or deemed to be registered under the Accountants Act (Cap. 2) and, in Divisions 1 and 1A of Part XIII, when used in relation to an entity not being a company, includes —

(a) a person who is duly registered, licensed, approved or otherwise authorised to practise as an auditor (such practice to include the issue of any opinion, report or other document on the audit of any financial statement) —

(i) under the laws of the place where the entity is formed or constituted;
or

(ii) under the laws of the place of his practice, if the auditing standards that are or will be applied to the financial statements of the entity are —

(A) auditing standards commonly applied in that place; or

(B) international auditing standards (by whatever name called); or

(b) such other person as may be approved by the Authority in any particular case to be an auditor for such entity;

“authorised benchmark submitter” means any corporation that is authorised by the Authority under section [19(1)] to be an authorised benchmark submitter for the purposes of this Act;

“Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

[.....]

“chief executive officer” —

(a) in relation to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, the holder of a capital markets services licence, the holder of a benchmark administration licence, an authorised benchmark

submitter or a directed benchmark submitter, means any person, by whatever name called, who is —

(i) in the direct employment of, or acting for or by arrangement with, the approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house, approved holding company, the holder of a capital markets services licence, the holder of a benchmark administration licence, an authorised benchmark submitter or a directed benchmark submitter, as the case may be; and

(ii) principally responsible for the management and conduct of the business of the approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house, approved holding company or holder of a capital markets services licence, licence, the holder of a benchmark administration licence, an authorised benchmark submitter or a directed benchmark submitter, as the case may be, in Singapore; or

(b) in relation to a corporation (other than one referred to in paragraph (a)), means any person, by whatever name called, who is in the direct employment of, or acting for or by arrangement with, the corporation, and who is principally responsible for the management and conduct of the business of the corporation”;

[.....]

“derivatives contract” —

(a) means any of the following (not being any securities or any futures contract):

(i) a forward contract;

(ii) an option contract;

(i) a swap contract;

(iv) any contract, arrangement or transaction that is, or that belongs to a class of contracts, arrangements or transactions that is, prescribed by the Authority by regulations made under section 341 for the purposes of this sub-paragraph; but

(a) does not include any contract, arrangement or transaction that is, or that belongs to a class of contracts, arrangements or transactions that is, prescribed by the Authority by regulations made under section 341 for the purposes of this paragraph;

“designated benchmark” means a financial benchmark that is designated by the Authority under section [1] to be a designated benchmark for the purposes of this Act;

“directed benchmark submitter” means a person directed by the Authority under section [39](1);

“director” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

[.....]

“executive officer”, in relation to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, the holder of a capital markets services licence, the holder of a benchmark administration licence, an authorised benchmark submitter or a directed benchmark submitter, or any other corporation, means any person, by whatever name called, who is —

(a) in the direct employment of, or acting for or by arrangement with, the approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house, approved holding company, holder of a capital markets services licence, holder of a benchmark administration licence, an authorised benchmark submitter or a directed benchmark submitter or other corporation, as the case may be; and

(b) concerned with or takes part in the management of the approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house, approved holding company, holder of a capital markets services licence, holder of a benchmark administration licence, an authorised benchmark submitter or a directed benchmark submitter or other corporation, as the case may be, on a day-to-day basis”;

“exempt benchmark administrator” means a person exempted from the requirement to hold a benchmark administration licence under section [17](1);

“exempt benchmark submitter” means a person exempted from the requirement to be authorised as an authorised benchmark submitter under section [32];

“exempt market operator” means —

(a) a corporation that is exempted under section 14(2);

(b) a corporation declared under section 14(8) to be an exempt market operator; or

(c) a corporation operating a market included in a class of markets in relation to which a declaration under section 14(9) is in force;

“exempt person” means a person who is exempted under section 99;

“financial benchmark” means

(a) any price, estimate, rate, index or value that is –

- (i) determined periodically, entirely or partially by the application of a formula or other methodology to information or expressions of opinion in respect of transactions in or the state of the market in respect of one or more underlying things;
 - (ii) made available to the public (whether free of charge or on payment) and
 - (iii) used for reference to determine –
 - (A) the interest payable or other sums due on deposits or credit facilities (where “credit facilities” means the granting by a person of advances, loans and other facilities to another person whereby the second mentioned person has access to funds or financial guarantees) ;
 - (B) the price, value or performance of any investment product as defined under Section 2(1) of the Financial Advisers Act (Cap 110); or
 - (C) the price, value or performance of any product offered by any entity regulated by the Authority; or
- (b) such other price, estimate, rate, index or value as the Authority may prescribe,

but does not include

- (i) a price, estimate, rate, index or value determined by or on behalf of the Government or a statutory board unless specifically prescribed by the Authority to be a financial benchmark;
- (ii) a price, estimate, rate, index or value determined by a person that is intended only for use in transactions or agreements entered into by the person unless specifically prescribed by the Authority to be a financial benchmark;
- (iii) the price of a single security or futures contract; or
- (iv) such other price, estimate, rate, index or value as the Authority may prescribe.

“financial instrument” includes any currency, currency index, interest rate, interest rate instrument, interest rate index, share, share index, stock, stock index, debenture, bond index, a group or groups of such financial instruments, and any other thing that is prescribed by the Authority by regulations made under section 341 for the purposes of this definition;

[.....]

“providing custodial services for securities” has the meaning given to it in the Second Schedule;

“providing information in relation to a designated benchmark” means providing any information or expression of opinion

(a) to, or for the purposes of passing to, a person administering a designated benchmark

(b) required in connection with the determination of the designated benchmark, and

(c) provided for the purpose of determining the designated benchmark.

“providing information in relation to a financial benchmark” means providing any information or expression of opinion:

(a) to or for the purposes of passing to, a person administering a financial benchmark;

(b) required in connection with the determination of the financial benchmark, and

(c) provided for the purpose of determining the financial benchmark

“provisional representative”, in respect of a type of regulated activity, has the meaning given to that expression in section 99E, and “provisional representative” means a provisional representative in respect of any type of regulated activity;

[.....]

“representative”,

(a) except for the purposes of Part XIII and subject to (b) and (c) below, means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, a person who carries on business in any regulated activity, who carries out for that person any such activity (other than work ordinarily performed by accountants, clerks or cashiers), whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise; and includes any officer of a corporation who performs for the corporation any such activity whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

(b) in relation to a holder of a benchmark administrator licence or an exempt benchmark administrator, means an individual who is authorised by the holder of a benchmark administrator licence or an exempt benchmark administrator to carry out the activity of administering a designated benchmark on the behalf of the holder or the exempt benchmark administrator ; and,

(c) in relation to an authorised benchmark submitter, an exempt benchmark submitter or a directed benchmark submitter, means an individual who is authorised by the authorised benchmark submitter, an exempt benchmark submitter or a directed benchmark submitter, to

carry out the activity of providing information in relation to a designated benchmark on the behalf of the authorised benchmark submitter or the exempt benchmark submitter or the directed benchmark submitter.”

“responsible person”, in relation to a collective investment scheme, means —

- (a) in the case of a scheme which is constituted as a corporation, the corporation; or
- (b) in the case of a scheme which is not constituted as a corporation, the manager for the scheme;

[.....]

“trustee-manager” —

- (a) in relation to a registered business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);
- (b) in relation to a business trust for which an application for registration has been made under section 4(1) of the Business Trusts Act, means the company proposed to be named as the trustee-manager in the application made under that section;
- (c) in relation to a recognised business trust, means the entity which manages and operates the recognised business trust, by whatever name called and whether incorporated or not; and
- (d) in relation to a business trust for which an application for recognition has been made under section 282TA(1), means the entity proposed to be managing and operating the trust, by whatever name called and whether incorporated or not;

“underlying thing”, in relation to a financial benchmark, means

- (a) an investment product as defined under section 2(1) of the Financial Advisers Act (Cap 110);
- (b) a commodity;
- (c) a financial instrument;
- (d) an intangible property or class of intangible properties; or
- (e) a price, estimate, rate, index or value that tracks the price, value, or performance of another investment product, commodity, financial instrument, or financial benchmark;
- (f) any arrangement, event, or transaction that is, or that belongs to a class of arrangements, events, or transactions that is, prescribed by the Authority;

“unit” —

- (a) in relation to a collective investment scheme, means a right or interest (however described) in a collective investment scheme (whether or not constituted as an entity), and includes an option to acquire any such right or interest in the collective investment scheme; and

(*b*) in relation to a business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

[.....]