

MAS Notice No.: XXX

Issue Date: XXX

NOTICE ON REQUIREMENTS IN RELATION TO CROSS-BORDER ARRANGEMENTS UNDER THE SECURITIES AND FUTURES (EXEMPTION FROM REQUIREMENTS) (CROSS-BORDER ARRANGEMENTS) (FOREIGN OFFICES) REGULATIONS

1. INTRODUCTION

- 1.1. This Notice is issued pursuant to section 101 of the Securities and Futures Act (Cap. 289) (“SFA”) and applies to all specified holders of a capital markets services licence and specified exempt persons as defined under regulation 2 of the Securities and Futures (Exemption from Requirements) (Cross-Border Arrangements) (Foreign Offices) Regulations (“SF(E)(CBA)(FO)R”) in relation to their cross-border arrangements.

2. DEFINITIONS

- 2.1. For the purposes of this Notice:

“SF(LCB)R” means Securities and Futures (Licensing and Conduct of Business) Regulations;

“Specified Regulated Entity” means a specified holder of a capital markets services licence or a specified exempt person; and

“transaction-related documentation” means any document that is issued or received by a foreign office in the course of carrying out a transaction under the cross-border arrangement.

- 2.2. The expressions used in this Notice shall, except where defined in this Notice or where the context otherwise requires, have the same meanings as in regulation 2 of the SF(E)(CBA)(FO)R and sections 2(1), 4A, 81SF, 239(1) and 283(1) of the SFA.

3. OBJECT OF NOTICE AND APPLICATION OF REQUIREMENTS UNDER PARAGRAPH 5

- 3.1. The requirements set out in this Notice serve to mitigate the risks from cross-border arrangements of Specified Regulated Entities.
- 3.2. The requirements set out in paragraph 5 below only apply to the Specified Regulated Entity from the following dates:

- (a) where paragraph 4.1 below applies, the date the Specified Regulated Entity commences business in a regulated activity under a cross-border arrangement in reliance on the exemptions under regulation 3 of the SF(E)(CBA)(FO)R;
- (b) where paragraph 4.2 below applies, the date of lodgement of the notice of cross-border arrangement mentioned in paragraph 4.2.

4. NOTIFICATION OF CROSS-BORDER ARRANGEMENTS

- 4.1. Where a foreign office of a Specified Regulated Entity only commences a business in a regulated activity under a cross-border arrangement after 8 October 2021, the Specified Regulated Entity must lodge with the Authority a notice of the cross-border arrangement in Form XX (as set out at the Authority's website at <http://www.mas.gov.sg>) not later than 14 days after the commencement of the cross-border arrangement.
- 4.2. Where a foreign office of a Specified Regulated Entity was, immediately prior to 9 October 2021, carrying on business in a regulated activity under an existing cross-border arrangement in reliance on any of the exemptions mentioned under regulation 6(3) of the SF(E)(CBA)(FO)R, and intends to continue carrying on business under the cross-border arrangement in reliance on the exemptions under the SF(E)(CBA)(FO)R after 8 October 2021, the Specified Regulated Entity must lodge with the Authority a notice of the cross-border arrangement in Form XX (as set out at the Authority's website at <http://www.mas.gov.sg>) not later than 8 April 2022.

5. ONGOING REQUIREMENTS IN RELATION TO CROSS-BORDER ARRANGEMENT

5.1. Restrictions on transactions within cross-border arrangements

- 5.1.1. Where the Specified Regulated Entity carries on business in the regulated activity of advising on corporate finance through its foreign office under a cross-border arrangement, the Specified Regulated Entity must not give advice on any of the following transactions that does not qualify as an Exempted Transaction under paragraph 5.1.2, in respect of such business:

- (a) any transaction involving an offer of specified products that is —
 - (i) required to be made in or accompanied by a prospectus under Part XIII of the SFA and made in or accompanied by a prospectus in respect of the offer;
 - (ii) made in or accompanied by a profile statement in reliance on an exemption under section 240(4) or 296(2) of the SFA; or
 - (iii) made in or accompanied by an offer information statement in reliance on an exemption under section 277(1) or 305B(1) of the SFA;

- (b) any transaction in which the Take-over Code applies;
- (c) any transaction where the Specified Regulated Entity is giving advice to any public company, a corporation whose capital markets products are listed for quotation on SGX-ST, or a corporation which is a subsidiary of a corporation whose capital markets products are listed for quotation on SGX-ST, except for a transaction where all of the following conditions are satisfied:
 - (i) the advice given by the Specified Regulated Entity will not be circulated to the shareholders of the corporations that are not accredited investors, institutional investors or expert investors;
 - (ii) the advice given by the Specified Regulated Entity will not be made known to the public.

5.1.2. For the purposes of paragraph 5.1.1, an Exempted Transaction is any transaction where all of the following conditions are satisfied:

- (a) the Specified Regulated Entity had entered the transaction through its branch or office (including head office) located in Singapore;
- (b) the Specified Regulated Entity is liable to the person receiving the advice, in respect of any advice given by the Specified Regulated Entity through its foreign office, under the terms of an agreement with the person receiving the advice;
- (c) the Specified Regulated Entity is not advising its related corporation through its foreign office.

5.2. **Internal Controls over Cross-Border Arrangement**

5.2.1. The Specified Regulated Entity must:

- (a) keep or cause to be kept in or outside Singapore, the following records in relation to the cross-border arrangement:
 - (i) records of customers of the Specified Regulated Entity with respect to business conducted by its foreign office under the cross-border arrangement;
 - (ii) records of transactions entered into by the Specified Regulated Entity through its foreign office with or on behalf of its customers in relation to the regulated activity conducted under the cross-border arrangement, including details of the transaction or transaction-related documentation; and
 - (iii) copies of contracts or agreements entered into by the Specified Regulated Entity through its foreign office with its customers in relation to the regulated activity conducted under the cross-border arrangement;

- (b) keep or cause to be kept in Singapore, a register of its foreign representatives containing the following information:
 - (i) the name of the foreign representative and the foreign office that the foreign representative is acting for;
 - (ii) the date(s) of any visit to Singapore by a foreign representative; and
 - (iii) the purpose of any such visit and details and description of any activities conducted by the foreign representative during the visit;
- (c) ensure that there are written policies and procedures governing the cross-border arrangement, including but not limited to the following:
 - (i) the solicitation of customers in Singapore by foreign representatives; and
 - (ii) the handling of complaints filed against foreign representatives; and
- (d) ensure the maintenance of the written policies and procedures mentioned under sub-paragraph (c), whether in or outside Singapore.

5.2.2. The Specified Regulated Entity must provide the Authority with any of the documents mentioned in paragraph 5.2.1(a) to (c) and where applicable, the translation of such documents in the English language, upon the Authority's written request.

5.3. **Reporting and Notification Requirements**

5.3.1. A Specified Regulated Entity must lodge with the Authority—

- (a) a notice of change in particulars in Form YY (as set out at the Authority's website at <http://www.mas.gov.sg>) providing any change in particulars provided in the notice under paragraph 4, not later than 14 days after the date of the change;
- (b) a notice of cessation of a cross-border arrangement in Form YY (as set out at the Authority's website at <http://www.mas.gov.sg>), not later than 14 days after the date of cessation of the cross-border arrangement; and
- (c) an annual declaration in relation to its cross-border arrangement(s) in Form ZZ (as set out at the Authority's website at <http://www.mas.gov.sg>), not later than 5 months from the end of the financial year.

Note:

Under section 101(3) of the SFA, any person who contravenes any of the directions issued by the Authority 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, a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.