

NEW PART VIAA (FINANCIAL BENCHMARKS) OF THE SFA

DIVISION 4 (GENERAL POWERS)

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SECURITIES AND FUTURES ACT

(CHAPTER 289)

PART I

PRELIMINARY

[.....]

PART VI

CONDUCT OF BUSINESS

[.....]

PART VIAA

FINANCIAL BENCHMARKS

[.....]

Division 4 – General Powers

Power of Authority to make regulations

33.—(1) Without prejudice to section 341, the Authority may make regulations relating to –

- (a) the grant of a benchmark administration licence;
- (b) the authorisation of a person as an authorised benchmark submitter;
- (c) the requirements applicable to a holder of a benchmark administration licence, an exempt benchmark administrator, a representative of a holder of a benchmark administration licence or an exempt benchmark administrator, or a class of such persons, in relation to administering a designated benchmark;
- (d) the requirements applicable to an authorised benchmark submitter, an exempt benchmark submitter, a directed benchmark submitter, a representative of an authorised benchmark submitter or an exempt benchmark submitter or a directed benchmark submitter, or a class of such

persons, in relation to providing information in relation to a designated benchmark;

- (e) the maintenance and submission of records of transactions undertaken by a financial institution in relation to one or more underlying things of a designated benchmark; and
- (f) the maintenance and submission of records by a financial institution in relation to its exposure in instruments referred to in paragraph (a)(iii) of the definition of ‘financial benchmark’ in section 2 which references a designated benchmark.

(2) In this section, “financial institution” means -

- (a) a bank licensed under the Banking Act (Cap. 19);
- (b) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
- (c) a finance company licensed under the Finance Companies Act (Cap. 108);
- (d) the holder of a capital markets services licence under the Securities and Futures Act 2001;
- (e) a licensed financial adviser under the Financial Advisers Act 2001;
- (f) a company or co-operative society licensed under the Insurance Act (Cap. 142) as a direct insurer carrying on life business;
- (g) an insurance intermediary licensed under any written law relating to insurance intermediaries if the intermediary arranges contracts of insurance in respect of life business; and
- (h) such other persons or class of persons as the Minister may by order prescribe, but excludes a money-changer licensed to conduct money-changing business and a remitter licensed to conduct remittance business under the Money-changing and Remittance Businesses Act (Cap. 187).

(3) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for penalties not exceeding a fine of \$100,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

Power of Authority to issue written directions

34.—(1) The Authority may, if it thinks it necessary or expedient in the interest of users of a designated benchmark or in the public interest, issue written directions, either of a general or specific nature, to any holder of a benchmark administration licence, authorised benchmark submitter, exempt benchmark administrator, exempt benchmark submitter, directed benchmark submitter, representative, or class of such persons, to comply with such requirements as the Authority may specify in the written directions.

(2) Without prejudice to the generality of [subsection \(1\)](#), any written direction may be issued with respect to —

- (a) the standards to be maintained by the person concerned in the conduct of his administering a designated benchmark or providing information in relation to a designated benchmark;
- (b) the type and frequency of submission of financial returns and other information to be submitted to the Authority; and
- (c) the qualifications, experience and training of representatives, and the person to whom such direction is issued shall comply with the direction.

(3) Any person who contravenes any of the directions issued under [subsection \(1\)](#) 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, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

(4) It shall not be necessary to publish any direction issued under [subsection \(1\)](#) in the *Gazette*.

Power of Authority to make prohibition orders

35.—(1) The Authority may, by notice in writing, make a prohibition order against a relevant person if —

- (a) the Authority suspends or revokes the benchmark administration licence held by the person;
- (b) where the person is exempt from the requirement to hold a benchmark administration licence under [section \[17\]\(1\)](#), the Authority has reason to believe that circumstances exist under which, if the person were a holder of a benchmark administration licence, there would exist a ground on which the Authority may suspend or revoke its licence under [section \[11\]](#);

- (c) the Authority suspends or revokes the authorisation of the person as an authorised benchmark submitter;
 - (d) where the person is exempt from the requirement to be authorised as an authorised benchmark submitter under [section \[32\]\(1\)](#) or the person is directed to provide information in relation to a designated benchmark under [section \[39\]\(1\)](#), the Authority has reason to believe that circumstances exist under which, if the person were an authorised benchmark submitter, there would exist a ground on which the Authority may suspend or revoke its licence under [section \[26\]](#);
 - (e) the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened-
 - (i) any provision of this Act;
 - (ii) any condition or restriction imposed by the Authority under this Act; or
 - (iii) any written direction issued by the Authority under this Act;
 - (f) the person has been convicted of an offence under this Act or has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly;
 - (g) the person has an order for the payment of a civil penalty made against him by a court under Part XII or has entered into an agreement with the Authority to pay a civil penalty under that Part;
 - (h) the person has been convicted of an offence involving the contravention of any law or requirement of a foreign country or territory relating to any regulated activity carried out by that person or relating to the administering of designated benchmark or providing information in relation to a designated benchmark; or
 - (i) the person has been removed at the direction of the Authority from office or employment as an officer of the holder of a benchmark administration licence under [section \[13\(2\)\]](#); or
 - (j) the person has been removed at the direction of the Authority from office or employment as an officer of an authorised benchmark submitter under [section \[28\(2\)\]](#)
- (2) In [subsection \(1\)](#), “relevant person” means —
- (a) the holder of a benchmark administration licence or a person who was previously such a holder;

- (b) a person that is exempt from the requirement to hold a benchmark administration licence under [section \[17\(1\)\]](#) or a person who was previously so exempt;
 - (c) an authorised benchmark submitter or a person who was previously an authorised benchmark submitter;
 - (d) a person that is exempt from the requirements to be authorised as an authorised benchmark submitter under [section \[32\(1\)\]](#) or a person who was previously so exempt;
 - (e) a person that is directed to provide information in relation to a designated benchmark under [section \[39\(1\)\]](#) or a person who was previously so directed;
 - (f) a representative of a holder of a benchmark administration licence or a person that is exempt from the requirements to hold a benchmark administration licence under [section \[17\(1\)\]](#), or a person who was previously such a representative;
 - (g) a representative of an authorised benchmark submitter, a person that is exempt from the requirements to be authorised as an authorised benchmark submitter under [section \[32\(1\)\]](#) or a person directed to provide information in relation to a designated benchmark under [section \[39\(1\)\]](#), or a person who was previously such a representative;
 - (h) an officer of the holder of a benchmark administration licence or a person that is exempt from the requirement to hold a benchmark administration licence under [section \[17\(1\)\]](#), or a person who was previously such an officer; or
 - (i) an officer of an authorised benchmark submitter, a person that is exempt from the requirement to be authorised as an authorised benchmark submitter under [section \[32\(1\)\]](#) or a person to provide information in relation to a designated benchmark under [section \[39\(1\)\]](#), or a person who was previously such an officer; or
 - (j) a person who has been convicted of an offence under this Act.
 - (k) a person who has had an order for the payment of a civil penalty made against him by a court under [Part XII](#) or has entered into an agreement with the Authority to pay a civil penalty under that Part.
- (3) A prohibition order made under [subsection \(1\)](#) may do one or more of the following:
- (a) prohibit the person, whether permanently or for a specified period, from —

- (i) performing the activity of administering a designated benchmark, or performing such activity in specified circumstances or capacities;
 - (ii) performing the activity of providing information in relation to a designated benchmark, or performing such activity in specified circumstances or capacities;
 - (iii) taking part, directly or indirectly, in the management of, acting as a director of, or becoming a substantial shareholder of —
 - (A) a holder of a benchmark administration licence;
 - (B) an exempt benchmark administrator;
 - (C) an authorised benchmark submitter;
 - (D) an exempt benchmark submitter; or
 - (E) a directed benchmark submitter;
- (b) include a provision allowing the person, subject to any condition specified in the order —
- (i) to do specified acts; or
 - (ii) to do specified acts in specified circumstances,
- that the order would otherwise prohibit him from doing.

(4) The Authority shall not make a prohibition order against a person without giving the person an opportunity to be heard.

(5) Any person who is aggrieved by the decision of the Authority to make a prohibition order against him may, within 30 days of the decision, appeal in writing to the Minister.

(6) The Authority shall keep, in such form as it thinks fit, records on persons against whom prohibition orders are made under this section.

(7) The Authority may publish the records referred to in subsection (6), or any part of them, in such manner as the Authority considers appropriate.

Effect of prohibition orders

36.—(1) A person against whom a prohibition order is made shall comply with the prohibition order.

(2) Where a prohibition order is made against a person and notified to the holder of a benchmark administration licence or an exempt benchmark administrator, the holder

or exempt benchmark administrator shall not employ the first-mentioned person to carry out the activity of administering a designated benchmark or use the first-mentioned person's service, to the extent that this is prohibited by the order.

(3) Where a prohibition order is made against a person and notified to an authorised benchmark submitter, an exempt benchmark submitter or a directed benchmark submitter, the authorised benchmark submitter, exempt benchmark submitter or directed benchmark submitter shall not employ the first-mentioned person to carry out the activity of providing information in relation to a designated benchmark or use the first-mentioned person's service, to the extent that this is prohibited by the order.

(4) Any person who contravenes [subsection \(1\)](#) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) Any person who contravenes [subsection \(2\) or \(3\)](#) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(6) A holder of a benchmark administration licence, an authorised benchmark submitter, an exempt benchmark administrator, an exempt benchmark submitter or a directed benchmark submitter against whom a prohibition order has been issued prohibiting it from carrying on the activity of administering a designated benchmark or providing information in relation to a designated benchmark shall immediately inform all its representatives who perform such activity, by notice in writing of such prohibition order, and the representatives who are so informed shall cease to perform such activity during the period specified in the prohibition order.

(7) Any person who contravenes [subsection \(6\)](#) 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.

Variation or revocation of prohibition orders

37.—(1) The Authority may vary or revoke a prohibition order, by giving written notice to the person against whom the order was made, if the Authority is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which the Authority made the order.

(2) The Authority may vary or revoke a prohibition order under [subsection \(1\)](#) —

- (a) on its own initiative; or
- (b) if the person against whom the order was made lodges with the Authority an application for the Authority to do so, accompanied by such document and fee as may be prescribed.

(3) The Authority shall not vary a prohibition order made against a person under [subsection \(2\)\(a\)](#) without giving the person an opportunity to be heard.

(4) Any person who is aggrieved by the decision of the Authority to vary a prohibition order made against him under [subsection \(2\)\(a\)](#) may, within 30 days of the decision, appeal in writing to the Minister.

Date and effect of prohibition orders

38.—(1) A prohibition order, or any variation or revocation of a prohibition order, shall take effect on the date specified in the order by the Authority.

(2) A prohibition order shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into by the person against whom the order is made, whether the agreement, transaction or arrangement was entered into before, on or after the issue of the prohibition order; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.