

THIS VERSION OF THE REGULATIONS IS IN DRAFT FORM AND SUBJECT TO CHANGE. IT IS ALSO SUBJECT TO REVIEW BY THE ATTORNEY GENERAL’S CHAMBERS.

Proposed Amendments to the Advertisement Requirements in the Securities and Futures (Licensing and Conduct of Business) Regulations

Definitions

2. In these Regulations, unless the context otherwise requires —

“advertisement” means any dissemination or conveyance of information in connection with a promotion of, or an invitation or a solicitation in respect of, any product or service, by any means or in any form, including by means of —

- (a) publication in a newspaper, magazine, journal or other periodical;
- (b) display of posters or notices;
- (c) circulars, handbills, brochures, pamphlets, books or other documents;
- (d) letters addressed to individuals or bodies;
- (e) photographs or cinematograph films; or
- (f) sound broadcasting, television, the Internet or other media;

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“Financial Institutions Directory” means a register of financial institutions, including licensed financial advisers and exempt financial advisers, published on the Authority’s website at <http://www.mas.gov.sg>;

“product advertisement” means an advertisement in respect of any capital markets products;

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“specified person” means —

- (a) a holder of a capital markets services licence;
- (b) an appointed representative;
- (c) a provisional representative; or
- (d) a temporary representative.

[S 381/2018 wef 09/07/2018]

Product advertisements

46.—(1) A specified person must not, whether through or in collaboration with another person —

- (a) disseminate or publish any product advertisement ~~on or after 10 December 2018~~; or
- (b) cause to be disseminated or published any product advertisement ~~on or after 10 December 2018~~,

unless the product advertisement complies with the requirements mentioned in paragraph (2).

(2) For the purposes of paragraph (1), the requirements are —

- (a) the product advertisement is not false or misleading;
- (b) the product advertisement provides a fair and balanced view of the capital markets products to which it relates;
- (c) the product advertisement presents information in a clear manner, regardless of whether such information is in text or otherwise;

(ca) the product advertisement states –

- (i) where the specified person is a holder of a capital markets services licence, the name of the specified person as set out in the Financial Institutions Directory; or
 - (ii) where the specified person is an appointed representative, a provisional representative or a temporary representative of a holder of a capital markets services licence, the name and representative number of the specified person as set out in the public register of representatives and the name of the holder of the capital markets services licence as set out in the Financial Institutions Directory;
 - (d) where the product advertisement appears in any medium of communication in visual form, the product advertisement is clearly legible;
 - (e) where the product advertisement appears in any electronic mail or website —
 - (i) the product advertisement is in a font size of at least 10-point Times New Roman or any other standard font type that is visually equivalent to that font size; and
 - (ii) any footnote in the product advertisement is not smaller than —
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- (A) where the font size of the word or statement to which the footnote relates is or is smaller than 20-point Times New Roman or any other standard font type that is visually equivalent to that font size — 10-point Times New Roman or any other standard font type that is visually equivalent to that font size;
- (B) where the font size of the word or statement to which the footnote relates is larger than 20-point Times New Roman or any other standard font type that is visually equivalent to that font size but smaller than 29-point Times New Roman or any other standard font type that is visually equivalent to that font size — half the font size of that word or statement; or
- (C) where the font size of the word or statement to which the footnote relates is or is larger than 29-point Times New Roman or any other standard font type that is visually equivalent to that font size — 14-point Times New Roman or any other standard font type that is visually equivalent to that font size;

(f) the product advertisement contains the following statement:

“This advertisement has not been reviewed by the Monetary Authority of Singapore.”; and

(g) the product advertisement has been approved by a person specified in regulation 46AA in the manner set out in that regulation prior to its dissemination or publication.

(3) Without limiting paragraph (2)(a), examples of a product advertisement that is false or misleading are set out in paragraph 1 of the Fourth Schedule.

(4) Without limiting paragraph (2)(b), examples of a product advertisement that does not provide a fair and balanced view of the capital markets products to which it relates are set out in paragraph 2 of the Fourth Schedule.

(5) Without limiting paragraph (2)(c), examples of a product advertisement that does not present information in a clear manner are set out in paragraph 3 of the Fourth Schedule.

(6) Without limiting paragraph (2)(d), examples of a product advertisement that is not clearly legible are set out in paragraph 4 of the Fourth Schedule.

(7) Paragraph (1) does not apply to any dissemination or publication of information that is —

(a) pursuant to any requirement —

- (i) imposed under any written law or rule of law of Singapore, or by any court in Singapore;
- (ii) imposed under the law of any foreign jurisdiction, or by any court in any foreign jurisdiction; or
- (iii) under any listing rule or other requirement of an approved exchange or an overseas exchange;

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(b) made in the course of an offer of securities or securities-based derivatives contracts —

- (i) other than an offer of securities or securities-based derivatives contracts that is exempt from the application of Subdivisions (2) and (3) of Division 1 of Part XIII of the Act (other than section 257 of the Act) under section 277(1) of the Act, by a person who is exempt from having to comply with section 251 of the Act;
- (ii) that is exempt from the application of Subdivisions (2) and (3) of Division 1 of Part XIII of the Act (other than section 257 of the Act) under section 272, 272A(1), 272B(1), 273(1) or (5), 274, 275(1) or (1A) or 278(1) of the Act; or
- (iii) that is exempt from the application of Subdivisions (2) and (3) of Division 1 of Part XIII of the Act under section 276(2) or 279 of the Act; or

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(c) *[Deleted by S 667/2018 wef 08/10/2018]*

(d) made in the course of an offer of units in a collective investment scheme —

- (i) other than an offer of units in a collective investment scheme that is exempt from the application of Subdivision (3) of Division 2 of Part XIII of the Act under section 305B(1) of the Act, by a person who is exempt from having to comply with section 300 of the Act;
- (ii) that is exempt from the application of Subdivisions (2) and (3) of Division 2 of Part XIII of the Act under section 302A, 302B(1), 302C(1), 303(2), 304 or 305(1) or (2) of the Act; or

- (iii) that is exempt from the application of Subdivision (3) of Division 2 of Part XIII of the Act under section 303(1) of the Act.

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(8) A specified person must not, directly or indirectly, publish, circulate or distribute on or after 8 October 2018 but before 10 December 2018 any advertisement —

- (a) which refers, directly or indirectly, to any past specific recommendations of the specified person in relation to any specified product or futures contract which were or would have been profitable to any person, except that the specified person may refer in an advertisement to a list of all recommendations made by the specified person within the period of not less than one year immediately before the date the advertisement is published, circulated or distributed, which list, if furnished separately from the advertisement, must —
 - (i) state the name of each specified product or futures contract (as the case may be) recommended, the date and nature of the recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the market price of the specified product or futures contract (as the case may be) as of the most recent practicable date; and
 - (ii) contain a statement, in as large a font as the largest font used in the body of the advertisement, to the effect that the past performance of the specified product or futures contract (as the case may be) in the list is not indicative of the future performance of the specified product or futures contract (as the case may be);
 - (b) which represents, directly or indirectly, that any graph, chart, formula or other device set out or referred to in the advertisement —
 - (i) can, in and of itself, be used to determine which specified product or futures contract to buy or sell, or when to buy or sell them; or
 - (ii) will assist any person in deciding which specified product or futures contract to buy or sell, or when to buy or sell them,
without prominently disclosing in the advertisement the limitations of such graph, chart, formula or device (as the case may be) and the difficulties with respect to its use;
 - (c) which contains any statement to the effect that any report, analysis or other service will be provided free or without charge, unless such report, analysis
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or service is in fact or will in fact be provided in its entirety and without any condition or obligation; or

- (d) which contains any inaccurate or misleading statement or presentation, or any exaggerated statement or presentation that is calculated to exploit an individual's lack of experience and knowledge.

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Approval of ~~product~~-advertisement

46AA.—(1) For the purposes of regulations 46(2)(g) and 46AD(2)(e), an ~~product~~ advertisement must be approved by —

- (a) the senior management of a holder of a capital markets services licence —
 - (i) which disseminates or publishes, or causes the dissemination or publication, of the ~~product~~-advertisement; or
 - (ii) which appointed representative, provisional representative or temporary representative disseminates or publishes, or causes the dissemination or publication, of the ~~product~~-advertisement;
- (b) an agent of the holder of the capital markets services licence mentioned in sub-paragraph (a); or
- (c) a committee of the holder of the capital markets services licence mentioned in sub-paragraph (a).

(2) For the purposes of paragraph (1)(a), an ~~product~~-advertisement is approved by the senior management of the holder of the capital markets services licence only if every member of the senior management —

- (a) is satisfied that the ~~product~~-advertisement complies with the requirements mentioned in regulation 46(2)(a) to (f) or regulation 46AD(2)(a) to (d), as the case may be;
- (b) records the member's reasons for being so satisfied in writing; and
- (c) gives written approval to the holder of the capital markets services licence for the dissemination or publication of the ~~product~~-advertisement, together with that member's reasons mentioned in sub-paragraph (b).

(3) For the purposes of paragraph (1)(b), an ~~product~~-advertisement is approved by an agent of the holder of the capital markets services licence only if the agent —

- (a) is satisfied that the ~~product~~-advertisement complies with the requirements mentioned in regulation 46(2)(a) to (f) or regulation 46AD(2)(a) to (d), as the case may be;
- (b) records the agent's reasons for being so satisfied in writing; and
- (c) gives written approval to the holder of the capital markets services licence for the dissemination or publication of the ~~product~~-advertisement, together with the agent's reasons mentioned in sub-paragraph (b).

(4) For the purposes of paragraph (1)(c), an ~~product~~-advertisement is approved by a committee of the holder of the capital markets services licence only if every member of the committee —

- (a) is satisfied that the ~~product~~-advertisement complies with the requirements mentioned in regulation 46(2)(a) to (f) or regulation 46AD(2)(a) to (d), as the case may be;
- (b) records the member's reasons for being so satisfied in writing; and
- (c) gives written approval to the holder of the capital markets services licence for the dissemination or publication of the ~~product~~-advertisement, together with that member's reasons mentioned in sub-paragraph (b).

(5) For the purposes of section 97(2) of the Act, the Authority must, when determining whether a chief executive officer or an executive director of a holder of a capital markets licence has failed to discharge the duties of his office, have regard to whether the chief executive officer or executive director (as the case may be) has caused the holder to disseminate or publish any ~~product~~-advertisement that has not been approved by the holder in accordance with regulation 46(2)(g) or regulation 46AD(2)(e), as the case may be.

(6) In this regulation —

“agent”, in relation to a holder of a capital markets services licence, means a person who —

- (a) may or may not be a member of the senior management of the holder of the capital markets services licence; and
- (b) is unanimously appointed by all the members of the senior management of the holder of the capital markets services licence to —
 - (i) determine whether an ~~product~~-advertisement complies with the requirements mentioned in regulation 46(2)(a) to (f) or regulation 46AD(2)(a) to (d), as the case may be; and

- (ii) approve the dissemination or publication of the ~~product~~ advertisement by the holder of the capital markets services licence, or an appointed representative, a provisional representative or a temporary representative of the holder of the capital markets services licence, as the case may be;

“committee”, in relation to a holder of a capital markets services licence, means a group of persons that —

- (a) comprises at least 2 persons, each of whom may or may not be a member of the senior management of the holder of the capital markets services licence; and

- (b) is unanimously appointed by all the members of the senior management of the holder of the capital markets services licence to —

- (i) determine whether an ~~product~~ advertisement complies with the requirements mentioned in regulation 46(2)(a) to (f) or regulation 46AD(2)(a) to (d), as the case may be; and

- (ii) approve the dissemination or publication of the ~~product~~ advertisement by the holder of the capital markets services licence, or an appointed representative, a provisional representative or a temporary representative of the holder of the capital markets services licence, as the case may be;

“member of the senior management”, in relation to a holder of a capital markets services licence which is an entity, means a person for the time being holding the office of —

- (a) chief executive officer or an equivalent person of the entity; or
- (b) executive director or an equivalent person of the entity,

and includes a person carrying out the duties of any such office if the office is vacant.

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Exemption from regulation 46(1)

46AB.—(1) A specified person need not comply with regulation 46(1) if —

- (a) the product advertisement is prepared by another person (called in this regulation the preparer) for the specified person; and
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- (b) prior to the specified person disseminating or publishing, or causing the dissemination or publication of, the product advertisement —
 - (i) the condition in paragraph (2) is satisfied; and
 - (ii) the preparer notifies the specified person in writing that the condition in paragraph (2) is satisfied.

(2) For the purpose of paragraph (1)(b), the condition is —

- (a) where the preparer is a specified person, the preparer has complied with regulation 46(1) as if the preparer were the specified person who will disseminate or publish, or cause the dissemination or publication of, the product advertisement;
- (b) where the preparer is a specified financial adviser, the preparer has complied with regulation 22(1) of the Financial Advisers Regulations (Cap. 110, Rg 2) as if the preparer were the specified financial adviser who will disseminate or publish, or cause the dissemination or publication of, the product advertisement; or
- (c) where the preparer is a person other than a specified person or a specified financial adviser —
 - (i) if the product advertisement is an advertisement or a publication mentioned in section 251(8), 273(8A) or 277(7) of the Act, the product advertisement complies with the requirements mentioned in regulation 17 of the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018 (G.N. No. S 664/2018);
[S 667/2018 wef 08/10/2018]
 - (ii) *[Deleted by S 667/2018 wef 08/10/2018]*
 - (iii) if the product advertisement is an advertisement or a publication mentioned in section 300(3C), 303(3) or 305B(8) of the Act, the product advertisement complies with the requirements in regulation 19A(1) of the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (G.N. No. S 602/2005).
[S 667/2018 wef 08/10/2018]

(3) In this regulation, “specified financial adviser” has the meaning under paragraph (b) of the definition of “specified financial adviser” in regulation 2(1) of the Financial Advisers Regulations.

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Maintaining records of approval

46AC.—(1) A holder of a capital markets services licence whose product advertisement is approved for the purposes of regulation 46(2)(g) or regulation 46AD(2)(e) must keep the following records for the following periods:

(a) where the ~~product~~-advertisement is approved by the senior management of the holder under regulation 46AA(1)(a), the written reasons and written approvals of all the members of the senior management mentioned in regulation 46AA(2)(b) and (c), respectively, for a period of at least 5 years after the date on which the last member of the senior management gave his written reasons and written approval;

(b) where the ~~product~~-advertisement is approved by an agent of the holder under regulation 46AA(1)(b) —

(i) the written consent of all the members of the senior management of the holder to the appointment of the agent;

(ii) the written reasons of the agent mentioned in regulation 46AA(3)(b); and

(iii) the written approval of the agent mentioned in regulation 46AA(3)(c),

for a period of at least 5 years after the date on which the agent gave his written reasons and written approval to the holder under regulation 46AA(3)(c);

(c) where the ~~product~~-advertisement is approved by a committee of the holder under regulation 46AA(1)(c) —

(i) the written consent of all the members of the senior management of the holder to the appointment of the committee;

(ii) the written reasons of all the members of the committee mentioned in regulation 46AA(4)(b); and

(iii) the written approval of all the members of the committee mentioned in regulation 46AA(4)(c),

for a period of at least 5 years after the date on which the last member of the committee gave his written reasons and written approval to the holder under regulation 46AA(4)(c).

(2) Where a holder of a capital markets services licence is exempt from regulation 46(1) under regulation 46AB(1) (read with regulation 46AB(2)(a)), paragraph (1) (read with regulation 46AA) applies to the preparer mentioned in regulation 46AB(2)(a) except

that any reference to the holder of the capital markets services licence is read as a reference to the preparer.

[S 381/2018 wef 09/07/2018]

Advertisement other than product advertisement

46AD.—(1) A specified person must not, whether through or in collaboration with another person —

- (a) disseminate or publish any non-product advertisement ~~on or after 10 December 2018~~; or
- (b) cause to be disseminated or published any non-product advertisement ~~on or after 10 December 2018~~,

unless the non-product advertisement complies with the requirements mentioned in paragraph (2).

(2) For the purposes of paragraph (1), the requirements are —

- (a) the non-product advertisement is not false or misleading;
 - (aa) the non-product advertisement presents information in a clear manner, regardless of whether such information is in text or otherwise;
 - (ab) where the non-product advertisement appears in any medium of communication in visual form, the non-product advertisement is clearly legible;
- (b) the non-product advertisement does not contain any statement to the effect that any report, analysis or other service will be furnished free or without charge, unless such report, analysis or service is in fact or will in fact be furnished in its entirety without any condition or obligation; and
- (c) the non-product advertisement does not contain any exaggerated statement which is calculated to exploit an individual's lack of experience and knowledge.
- (d) the non-product advertisement states —
 - (i) where the specified person is a holder of a capital markets services licence, the name of the specified person as set out in the Financial Institutions Directory; or
 - (ii) where the specified person is an appointed representative, a provisional representative or a temporary representative of a holder of a capital markets services licence, the name and representative number

of the specified person as set out in the public register of representatives and the name of the holder of the capital markets services licence as set out in the Financial Institutions Directory;

(e) the non-product advertisement has been approved by a person specified in regulation 46AA in the manner set out in that regulation prior to its dissemination or publication.

(2A) Without limiting paragraph (2)(ab), the examples set out in paragraph 4 of the Fourth Schedule apply as examples of a non-product advertisement that is not clearly legible, and a reference to a product advertisement in that paragraph is read as a reference to a non-product advertisement.

(3) In this regulation, “non-product advertisement” means an advertisement, other than a product advertisement, that is in respect of the provision of any product or service that is regulated by the Act.

[S 381/2018 wef 09/07/2018]

FOURTH SCHEDULE

Regulation 46(3) to (6)

PRODUCT ADVERTISEMENT

1. For the purposes of regulation 46(3), each of the following product advertisements is false or misleading:

- (a) a product advertisement that omits any material information and as a result of which, the product advertisement or any part of the product advertisement is false or misleading;
- (b) a product advertisement that contains a false or misleading statement;
- (c) a product advertisement that contains information that cannot be justified based on the facts known to the person who disseminated or published the product advertisement, or caused the product advertisement to be disseminated or published;
- (d) a product advertisement that contains any information, in text or otherwise, that is inaccurate or inconsistent with the nature or risks of the capital markets products to which it relates;
- (e) a product advertisement that contains any exaggerated statement which is calculated to exploit an individual's lack of experience and knowledge;
- (f) a product advertisement that contains information which is inconsistent with any information provided by the issuer of the capital markets products (to which the product advertisement relates) to the person who disseminated or published the product advertisement, or caused the product advertisement to be disseminated or published;
- (g) a product advertisement that contains or refers to any graph, chart, formula or other device and represents directly or indirectly, that —
 - (i) the graph, chart, formula or device (as the case may be) can, in and of itself, be used to determine which capital markets products to buy or sell, or when to buy or sell capital markets products; or
 - (ii) the graph, chart, formula or device (as the case may be) will assist any person in deciding which capital markets products to buy or sell, or when to buy or sell capital markets products,

but does not prominently disclose the limitations, and difficulties in respect of the use, of the graph, chart, formula or device (as the case may be);

- (h) a product advertisement that contains any statement to the effect that any report, analysis or other service will be furnished free or without charge, and such report, analysis or service is not in fact or will not in fact be furnished in its entirety without any condition or obligation.

2. For the purposes of regulation 46(4), each of the following product advertisements does not provide a fair and balanced view of the capital markets products to which it relates:

- (a) a product advertisement that contains a statement on any return of the principal sum invested in the capital markets products to which the product advertisement relates, or benefit of holding those capital markets products, but —
 - (i) does not provide an unbiased description of risks associated with the capital markets products; or
 - (ii) does not give a proportionate level of prominence to any warning, disclaimer or qualification which is disclosed in relation to that statement;
 - (b) an advertisement that is in respect of any capital markets products that is structured with the objective of returning the full principal sum invested in the capital markets products to a holder of the capital markets products upon the maturity of the capital markets products, but where the return of the full principal sum invested in the capital markets products at maturity is not unconditionally guaranteed, and the product advertisement does not contain a statement which clearly highlights the fact that the return of the full principal sum invested in the capital markets products at maturity is not unconditionally guaranteed;
 - (c) a product advertisement that contains a representation that the return of all or a part of the principal sum invested in the capital markets products to which the product advertisement relates, or that the rate of return on the capital markets products is guaranteed, but —
 - (i) does not state the name of the guarantor; or
 - (ii) does not contain a statement that clearly highlights that while there is a guarantor who guarantees the return of all or a part of the principal sum invested in the capital markets products, or the rate of return on the capital markets products, there is no assurance that the guarantor will be able to fulfil its obligations under such guarantee;
 - (d) a product advertisement that contains historical information on the capital markets products to which the product advertisement relates, but does not contain a statement that the information presented is historical information and that the past performance of the capital markets products is not indicative of its future performance;
 - (e) a product advertisement that gives the impression that an investor can profit from investing in the capital markets products without any risk;
 - (f) a product advertisement that suggests that the nature of the capital markets products is, or is comparable to, a deposit;
 - (g) an advertisement that is in respect of any capital markets products of which the return of the principal sum invested in the capital markets products or the rate of return on the capital markets products is not guaranteed, but suggests that any of the following risks is low or nil:
 - (i) the risk of the holder of the capital markets products losing the holder's principal sum invested;
 - (ii) the risk of the holder of the capital markets products not achieving the stated, targeted or expected rate of return of the holder's principal sum invested.
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3. For the purposes of regulation 46(5), each of the following product advertisements does not present information in a clear manner:

- (a) a product advertisement that presents information (including information in footnotes) in a manner that is not easily understood by —
 - (i) in a case where the product advertisement states the class of persons for whom the product advertisement is intended, a reasonable person belonging to that class of persons; and
 - (ii) in any other case, a reasonable person who may rely on the product advertisement;
- (b) a product advertisement that contains any jargon or technical term, but does not define or explain such jargon or term in a manner that is easily understood by —
 - (i) in a case where the product advertisement states the class of persons for whom the product advertisement is intended, a reasonable person belonging to that class of persons; and
 - (ii) in any other case, a reasonable person who may rely on the product advertisement.

4. For the purposes of regulation 46(6), each of the following product advertisements is not clearly legible:

- (a) a product advertisement that appears in any document in written or printed form, including any newspaper, periodical, magazine or letter, which —
 - (i) presents information in a font size that is smaller than 10-point Times New Roman, or any other standard font type that is visually equivalent to that font size; or
 - (ii) presents information in any footnote in a font size that is smaller than —
 - (A) where the font size of the word or statement to which the footnote relates is or is smaller than 20-point Times New Roman or any other standard font type that is visually equivalent to that font size — 10-point Times New Roman or any other standard font type that is visually equivalent to that font size;
 - (B) where the font size of the word or statement to which the footnote relates is larger than 20-point Times New Roman or any other standard font type that is visually equivalent to that font size but smaller than 29-point Times New Roman or any other standard font type that is visually equivalent to that font size — half the font size of that word or statement; or
 - (C) where the font size of the word or statement to which the footnote relates is or is larger than 29-point Times New Roman or any other standard font type that is visually equivalent to that font size — 14-point Times New Roman or any other standard font type that is visually equivalent to that font size;
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(b) a product advertisement that appears in a form, other than a document mentioned in subparagraph (a), which presents information in any footnote in a font size that is smaller than half the font size of the word or statement to which the footnote relates.

5. In this Schedule, unless the context otherwise requires —

“bank” means a bank in Singapore or a merchant bank;

“bank in Singapore” has the same meaning as in section 2(1) of the Banking Act (Cap. 19);

“deposit” means —

- (a) where the deposit is accepted by a bank, a deposit as defined in section 4B(4) of the Banking Act; or
- (b) where the deposit is accepted by a finance company, a deposit as defined in section 2 of the Finance Companies Act (Cap. 108);

“finance company” has the same meaning as in section 2 of the Finance Companies Act;

“merchant bank” has the same meaning as in section 2(1) of the Banking Act.

[S 464/2021 wef 01/07/2021]
