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No. S 385

FINANCIAL ADVISERS ACT
(CHAPTER 110)

FINANCIAL ADVISERS
(AMENDMENT) REGULATIONS 2018

In exercise of the powers conferred by sections 100(1) and 104(1) of the Financial Advisers Act, the Monetary Authority of Singapore makes the following Regulations:

Citation and commencement

1. These Regulations are the Financial Advisers (Amendment) Regulations 2018 and come into operation on 9 July 2018.

Amendment of regulation 2

2. Regulation 2(1) of the Financial Advisers Regulations (Rg 2) (called in these Regulations the principal Regulations) is amended —

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

““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;

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- (e) photographs or cinematograph films;
or
 - (f) sound broadcasting, television, the Internet or other media;”;
 - (b) by inserting, immediately after the definition of “capital markets products”, the following definition:
 - “ “capital markets services licence” has the same meaning as in section 2(1) of the Securities and Futures Act;”;
 - (c) by inserting, immediately after the definition of “paid-up capital”, the following definition:
 - “ “product advertisement” means an advertisement in respect of any investment product;”;
 - (d) by inserting, immediately after the definition of “Registered Fund Management Company”, the following definitions:
 - “ “specified financial adviser” —
 - (a) in the case of regulation 39, has the meaning as in regulation 40B; and
 - (b) in any other case, means a licensed financial adviser or an exempt financial adviser mentioned in section 23(1)(a), (b), (c), (e), (ea) or (f) of the Act;
 - “specified person” —
 - (a) in the case of regulation 40F, has the meaning under that provision; and
 - (b) in any other case, means —
 - (i) a specified financial adviser; or
 - (ii) an appointed representative or a provisional representative of a specified financial adviser;”.

New regulations 22 to 22D

3. The principal Regulations are amended by inserting, immediately after regulation 21, the following regulations:

“Product advertisements

22.—(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 investment product to which it relates;
- (c) the product advertisement presents information in a clear manner, regardless of whether such information is in text or otherwise;
- (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 —
 - (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 22A 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 Sixth Schedule.

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

(7) Paragraph (1) does not apply to —

(a) a specified person who, under regulation 27(1), is exempt under section 23(1)(f) of the Act from holding a financial adviser's licence;

(b) any dissemination or publication of information that is 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 a securities exchange, a futures exchange, an overseas securities exchange or an overseas futures exchange; and

(c) any dissemination or publication of information by a specified person in the course of carrying out an activity in respect of which the specified person is —

(i) exempt under regulation 27A(1) from complying with section 23(4) of the Act and regulation 37;

(ii) exempt under regulation 27A(2) from complying with section 23B(1) of the Act;

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- (iii) under regulation 28(1), exempt under section 23(1)(f) of the Act from holding a financial adviser's licence;
 - (iv) exempt under regulation 28(2), (3) or (4) from complying with sections 26 to 29 and 36 of the Act;
 - (v) under regulation 32A, exempt under section 23(1)(f) of the Act from holding a financial adviser's licence;
 - (vi) exempt under regulation 32B(1) from complying with sections 25 to 29, 32, 34 and 36 of the Act and regulation 37;
 - (vii) exempt under regulation 32B(2) or (4) from complying with sections 25, 26 and 36 of the Act;
 - (viii) exempt under regulation 32B(3) from complying with sections 25, 26, 27, 29, 34 and 36 of the Act;
 - (ix) under regulation 32C(1), exempt under section 23(1)(f) of the Act from holding a financial adviser's licence;
 - (x) exempt under regulation 32D(1) from complying with sections 25 to 29, 32, 33, 34 and 36 of the Act, as applied by section 23(4) of the Act;
 - (xi) exempt under regulation 32D(2) from complying with section 23B(1) of the Act;
 - (xii) exempt under regulation 32D(3) from complying with section 23B(3) of the Act;
 - (xiii) exempt under regulation 36(1) from complying with sections 25 to 29, 32, 34 and 36 of the Act;
 - (xiv) exempt under regulation 36(2) from complying with sections 25, 26, 27, 29, 34 and 36 of the Act;

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- (xv) exempt under regulation 3(1) of the Financial Advisers (Exemption from sections 25 to 29 and 36) Regulations (Rg 6) from complying with sections 25 to 29 and 36 of the Act;
 - (xvi) under regulation 3 of the Financial Advisers (Exemption from Requirement to Hold Financial Adviser’s Licence) Regulations 2014 (G.N. No. S 800/2014), exempt under section 23(1)(f) of the Act from holding a financial adviser’s licence;
 - (xvii) exempt under regulation 4 of the Financial Advisers (Structured Deposits — Prescribed Investment Product and Exemption) Regulations (Rg 7) from complying with section 25 of the Act; or
 - (xviii) exempt under regulation 4 of the Financial Advisers (Structured Deposits — Prescribed Investment Product and Exemption) Regulations from complying with sections 26 to 29 and 36 of the Act.

(8) A specified person who contravenes paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(9) In this regulation, “overseas futures exchange” and “overseas securities exchange” have the same meanings as in section 2(1) of the Securities and Futures Act (Cap. 289).

Approval of product advertisement

22A.—(1) For the purposes of regulation 22(2)(g), a product advertisement must be approved by —

- (a) the senior management of the specified financial adviser —
 - (i) which disseminates or publishes, or causes the dissemination or publication, of the product advertisement; or

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- (ii) which appointed representative or provisional representative disseminates or publishes, or causes the dissemination or publication, of the product advertisement;
 - (b) an agent of the specified financial adviser mentioned in sub-paragraph (a); or
 - (c) a committee of the specified financial adviser mentioned in sub-paragraph (a).
- (2) For the purposes of paragraph (1)(a), a product advertisement is approved by the senior management of the specified financial adviser only if every member of the senior management —
- (a) is satisfied that the product advertisement complies with the requirements mentioned in regulation 22(2)(a) to (f);
 - (b) records the member's reason for being so satisfied in writing; and
 - (c) gives written approval to the specified financial adviser 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), a product advertisement is approved by an agent of the specified financial adviser only if the agent —
- (a) is satisfied that the product advertisement complies with the requirements mentioned in regulation 22(2)(a) to (f);
 - (b) records the agent's reason for being so satisfied in writing; and
 - (c) gives written approval to the specified financial adviser 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), a product advertisement is approved by a committee of the specified financial adviser only if every member of the committee —

- (a) is satisfied that the product advertisement complies with the requirements mentioned in regulation 22(2)(a) to (f);
- (b) records the member's reason for being so satisfied in writing; and
- (c) gives written approval to the specified financial adviser 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 57(2) of the Act, the Authority must, when determining whether a chief executive officer or an executive director of a licensed financial adviser 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 licensed financial adviser to disseminate or publish any product advertisement that has not been approved by the licensed financial adviser in accordance with regulation 22(2)(g).

(6) In this regulation —

“agent”, in relation to a specified financial adviser, means a person who —

- (a) may or may not be a member of the senior management of the specified financial adviser; and
- (b) is unanimously appointed by all the members of the senior management of the specified financial adviser to —
 - (i) determine whether a product advertisement complies with the requirements mentioned in regulation 22(2)(a) to (f); and

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- (ii) approve the dissemination or publication of the product advertisement by the specified financial adviser, or an appointed representative or a provisional representative of the specified financial adviser, as the case may be;

“committee”, in relation to a specified financial adviser, 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 specified financial adviser; and
- (b) is unanimously appointed by all members of the senior management of the specified financial adviser to —
 - (i) determine whether a product advertisement complies with the requirements mentioned in regulation 22(2)(a) to (f); and
 - (ii) approve the dissemination or publication of the product advertisement by the specified financial adviser, or an appointed representative or a provisional representative of the specified financial adviser, as the case may be;

“member of the senior management”, in relation to a specified financial adviser 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.

Exemption from regulation 22(1)

22B.—(1) A specified person need not comply with regulation 22(1) if —

- (a) the product advertisement is prepared by another person (called in this regulation the preparer) for the specified person; and
 - (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 22(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 holder of a capital markets services licence, the preparer has complied with regulation 46(1) of the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap. 289, Rg 10) as if the preparer were the holder 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 holder of a capital markets services licence —
 - (i) if the product advertisement is an advertisement or a publication mentioned in section 251(8), 273(8A) or 277(7) of the Securities and Futures Act (Cap. 289), the product advertisement

complies with the requirements mentioned in regulation 16(1) of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 (G.N. No. S 611/2005);

- (ii) if the product advertisement is an advertisement or a publication mentioned in section 282L(8), 282X(8A) or 282ZB(8) of the Securities and Futures Act, the product advertisement complies with the requirements mentioned in regulation 14(1) of the Securities and Futures (Offers of Investments) (Business Trusts) (No. 2) Regulations 2005 (G.N. No. S 612/2005); or
- (iii) if the product advertisement is an advertisement or a publication mentioned in section 300(3C), 303(3) or 305B(8) of the Securities and Futures Act, the product advertisement complies with the requirements in regulation 21(1) of the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (G.N. No. S 602/2005).

Maintaining records of approval

22C.—(1) A specified financial adviser whose product advertisement is approved for the purposes of regulation 22(2)(g) must keep the following records for the following periods:

- (a) where the product advertisement is approved by the senior management of the specified financial adviser under regulation 22A(1)(a), the written reasons and written approvals of all the members of the senior management mentioned in regulation 22A(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 specified financial adviser under regulation 22A(1)(b) —

- (i) the written consent of all the members of the senior management of the specified financial adviser to the appointment of the agent;
- (ii) the written reasons of the agent mentioned in regulation 22A(3)(b); and
- (iii) the written approval of the agent mentioned in regulation 22A(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 specified financial adviser under regulation 22A(3)(c);

(c) where the product advertisement is approved by a committee of the specified financial adviser under regulation 22A(1)(c) —

- (i) the written consent of all the members of the senior management of the specified financial adviser to the appointment of the committee;
- (ii) the written reasons of all the members of the committee mentioned in regulation 22A(4)(b); and
- (iii) the written approval of all the members of the committee mentioned in regulation 22A(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 specified financial adviser under regulation 22A(4)(c).

(2) Where a specified financial adviser is exempt from regulation 22(1) under regulation 22B(1) (read with regulation 22B(2)(a)), paragraph (1) (read with regulation 22A) applies to the preparer mentioned in

regulation 22B(2)(a) except that any reference to the specified financial adviser is read as a reference to the preparer.

(3) A specified financial adviser who contravenes paragraph (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

Advertisement other than product advertisement

22D.—(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;
- (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 exploits an individual's lack of experience and knowledge.

(3) A specified person who contravenes paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(4) 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.”.

New Sixth Schedule

4. The principal Regulations are amended by inserting, immediately after the Fifth Schedule, the following Schedule:

“SIXTH SCHEDULE

Regulation 22(3) to (6)

PRODUCT ADVERTISEMENT

1. For the purposes of regulation 22(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 investment product 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 investment product (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 —

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- (i) the graph, chart, formula or device (as the case may be) can, in and of itself, be used to determine which investment product to buy or sell, or when to buy or sell the investment product; or
 - (ii) the graph, chart, formula or device (as the case may be) will assist any person in deciding which investment product to buy or sell, or when to buy or sell the investment product,

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 22(4), each of the following product advertisements does not provide a fair and balanced view of the investment product to which it relates:

- (a) a product advertisement that contains a statement on any return of the principal sum invested in the investment product to which the product advertisement relates, or benefit of holding that investment product, but —
 - (i) does not provide an unbiased description of risks associated with the investment product; 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 an investment product that is structured with the objective of returning the full principal sum invested in the investment product to a holder of the investment product upon the maturity of the investment product, but where the return of the full principal sum invested in the investment product 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 investment product 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 investment

product to which the product advertisement relates, or the rate of return on the investment product 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 investment product, or the rate of return on the investment product, 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 investment product 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 investment product is not indicative of its future performance;
- (e) a product advertisement that gives the impression that an investor can profit from investing in the investment product without any risk;
- (f) a product advertisement that suggests that the nature of the investment product is, or is comparable to, a deposit;
- (g) an advertisement that is in respect of an investment product of which the return of the principal sum invested in the investment product or the rate of return on the investment product is not guaranteed, but suggests that any of the following risks is low or nil:
- (i) the risk of the holder of the investment product losing the holder's principal sum invested;
 - (ii) the risk of the holder of the investment product not achieving the stated, targeted or expected rate of return of the holder's principal sum invested.

3. For the purposes of regulation 22(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

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- (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 22(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;

(b) a product advertisement that appears in a form, other than a document mentioned in sub-paragraph (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” means a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186).”.

*[G.N. Nos. S 76/2004; S 692/2004; S 362/2005; S 58/2007;
S 274/2008; S 716/2010; S 433/2011; S 383/2012;
S 166/2013; S 169/2015; S 394/2015; S 815/2015;
S 521/2016; S 113/2017; S 586/2017]*

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