

Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021

Table of Contents

Enacting Formula

1 Citation and commencement

2 Definitions

3 Forms

4 Exemption for licensed financial advisers carrying on qualifying businesses through foreign offices under cross-border arrangements, and their foreign representatives

5 Exemption for licensed financial advisers previously carrying on qualifying businesses providing certain financial advisory services in respect of specified OTC derivatives contracts through foreign offices under cross-border arrangements, and their foreign representatives

6 Exemption for specified exempt financial advisers carrying on qualifying business through foreign offices under cross-border arrangements, and their foreign representatives

7 Exemption for certain specified exempt financial advisers previously carrying on qualifying businesses providing certain financial advisory services in respect of specified investment products through foreign offices under cross-border arrangements, and their foreign representatives

8 Circumstances for exemption

FINANCIAL ADVISERS ACT
(CHAPTER 110)

FINANCIAL ADVISERS
(EXEMPTION FOR CROSS-BORDER ARRANGEMENTS)
(FOREIGN OFFICES) REGULATIONS 2021

In exercise of the powers conferred by section 100(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 (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 and come into operation on 9 October 2021.

Definitions

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

“accredited investor” has the meaning given by section 4A(1)(a) of the Securities and Futures Act (Cap. 289);

“AML/CFT requirement” or “Anti-Money Laundering/Countering the Financing of Terrorism requirement”, in relation to a foreign jurisdiction, means a law or regulatory requirement of that foreign jurisdiction for the detection or prevention of money laundering or the financing of terrorism;

“cross-border arrangement” means an arrangement implemented by a licensed financial adviser or specified exempt financial adviser under which the licensed financial adviser or specified exempt financial adviser (as the case may be) carries on (through a foreign office) a qualifying business;

“derivatives contract” has the same meaning as in section 2(1) of the Securities and Futures Act;

“exchange-traded derivatives contract” has the meaning given by section 2(1) of the Securities and Futures Act;

“expert investor” has the meaning given by section 4A(1)(b) of the Securities and Futures Act;

“FATF” means the intergovernmental body known as the Financial Action Task Force;

“foreign exchange OTC derivatives contract” means an OTC derivatives contract entered into on a margin basis the value of which is determined by reference to, is derived from, or varies by reference to —

- (a) the value or amount of any currency or currency index; or
- (b) fluctuations in the values or amounts of any currency or currency index;

“foreign jurisdiction” means a country or jurisdiction other than Singapore;

“foreign office”, in relation to a licensed financial adviser or specified exempt financial adviser, means an office (including the head office) or a branch of the licensed financial adviser or specified exempt financial adviser (as the case may be) that is established outside Singapore;

“foreign regulatory authority” means —

- (a) an authority of a foreign jurisdiction, exercising any function that corresponds to a regulatory function of the Authority under the Monetary Authority of Singapore Act (Cap. 186); or
- (b) a non-governmental organisation exercising any function that corresponds to a regulatory function of the Authority under the Monetary Authority of Singapore Act under the law of, or by delegation from an authority of, a foreign jurisdiction;

“foreign representative”, in relation to a licensed financial adviser or specified exempt financial adviser, means a representative of the licensed financial adviser or specified exempt financial adviser (as the case may be), who —

- (a) is ordinarily resident outside Singapore;
- (b) is not an appointed representative or a provisional representative of the licensed financial adviser or specified exempt financial adviser, as the case may be; and
- (c) performs on behalf of a foreign office of the licensed financial adviser or specified exempt financial adviser (as the case may be) any financial advisory service in respect of which the licensed financial adviser or specified exempt financial adviser (as the case may be) is carrying on (through the foreign office) a qualifying business under a cross-border arrangement;

“institutional investor” has the meaning given by section 4A(1)(c) of the Securities and Futures Act;

“on a margin basis”, in relation to a contract, means the entering of a contract by

2 parties where one party provides to the other party (whether directly or indirectly through such party's agent) money, securities, property or other collateral which represents only a part of the value of the contract;

“over-the-counter derivatives contract” or “OTC derivatives contract” means a derivatives contract other than an exchange-traded derivatives contract;

“specified exempt financial adviser” means an exempt financial adviser mentioned in section 23(1)(a), (b), (c), (d) or (e) of the Act;

“specified investment product” means —

- (a) any specified OTC derivatives contract;
- (b) any foreign exchange OTC derivatives contract arranged by —
 - (i) any bank that holds a licence granted under section 7 or 79 of the Banking Act (Cap. 19); or
 - (ii) any merchant bank that holds a merchant bank licence, or is treated as having been granted a merchant bank licence, under the Banking Act; or
- (c) any spot foreign exchange contract for the purposes of leveraged foreign exchange trading arranged by —
 - (i) any bank that holds a licence granted under section 7 or 79 of the Banking Act; or
 - (ii) any merchant bank that holds a merchant bank licence, or is treated as having been granted a merchant bank licence, under the Banking Act;

“specified OTC derivatives contract” means an OTC derivatives contract the value of which is determined by reference to, is derived from, or varies by reference to —

- (a) the value or amount of any item other than any —
 - (i) securities;
 - (ii) securities index;
 - (iii) currency; or
 - (iv) currency index; or
- (b) fluctuations in the values or amounts of one or more items other than

any —

- (i) securities;
- (ii) securities index;
- (iii) currency; or
- (iv) currency index;

“spot foreign exchange contract” has the meaning given by section 2(1) of the Securities and Futures Act.

(2) For the purposes of these Regulations, “qualifying business” —

- (a) in relation to a licensed financial adviser — means a business of providing any financial advisory service in respect of one or more types of investment products authorised by the financial adviser’s licence; or
- (b) in relation to a specified exempt financial adviser — means a business of providing any financial advisory service in respect of one or more types of investment products, where the specified exempt financial adviser has, in respect of that financial advisory service —
 - (i) lodged with the Authority a notice under regulation 37(1)(b) or (ba) of the Financial Advisers Regulations (Rg 2); and
 - (ii) not lodged with the Authority a notice under regulation 37(1)(d) of those Regulations.

Forms

3.—(1) Form FN, which is to be used for the purposes of these Regulations, is set out on the Authority’s Internet website at <http://www.mas.gov.sg>, and any reference in these Regulations to Form FN is a reference to the current version of the form bearing the corresponding letters which is displayed on that website.

(2) Any document required to be lodged with the Authority under these Regulations must be lodged in the relevant form and in the manner specified in the website mentioned in paragraph (1), or in such other manner as the Authority may specify from time to time.

(3) Any form used for the purposes of these Regulations must be completed in the English language and in accordance with such directions as may be specified in the form or by the Authority.