

# **Securities and Futures (Capital Markets Services Licence and Representative's Licence) (Transitional and Savings Provisions) Regulations**

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## **Legislative History**

### **SECURITIES AND FUTURES ACT (CHAPTER 289, SECTION 343)**

### **SECURITIES AND FUTURES (CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVE'S LICENCE) (TRANSITIONAL AND SAVINGS PROVISIONS) REGULATIONS**

**Rg 7**

**G.N. No. S 396/2002**

**REVISED EDITION 2004**

**(29th February 2004)**

**[8th August 2002]**

## Citation

1. These Regulations may be cited as the Securities and Futures (Capital Markets Services Licence and Representative's Licence) (Transitional and Savings Provisions) Regulations.

## Definitions

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

“appointed date” means the date on which Part IV of the Act<sup>1</sup> comes into operation;

<sup>1</sup> Part IV of the Act came into operation on 1st October 2002 *vide* S 454/2002.

“FTA” means the Futures Trading Act (Cap. 116, 1996 Ed.) in force immediately before the appointed date;

“representative's licence” means a representative's licence granted under section 87 of the Act;

“SIA” means the Securities Industry Act (Cap. 289, 1985 Ed.) in force immediately before the appointed date.

## Licensees under FTA and SIA

3.—(1) Unless otherwise notified in writing by the Authority by the appointed date under regulation 4 or 5 of the Financial Advisers (Transitional and Savings Provisions) Regulations (Rg 1) —

- (a) a person who holds any of the following licences immediately before the appointed date shall, from that date, be deemed to hold a capital markets services licence in respect of the regulated activity or activities which that person was carrying on under the authority of the first-mentioned licence:
  - (i) a futures broker's licence granted under Part III of the FTA;
  - (ii) a futures trading adviser's licence granted under Part III of the FTA;
  - (iii) a futures pool operator's licence granted under Part III of the FTA;
  - (iv) a dealer's licence granted under Part IV of the SIA;
  - (v) an investment adviser's licence granted under Part IV of the SIA;

(b) any condition or restriction —

- (i) to which any licence referred to in sub-paragraph (a)(i) to (v) was subject immediately before the appointed date, to the extent that it is consistent with the provisions of the Act and these Regulations; or
- (ii) notified by the Authority under paragraph (4) to the holder of the licence,

shall be deemed to be a condition or restriction to which the corresponding capital markets services licence referred to in sub-paragraph (a) is subject.

(2) For the purposes of paragraph (1), a person who holds a dealer's licence granted under Part IV of the SIA, and carries on business in securities financing or providing custodial services for securities immediately before the appointed date shall, from that date, be deemed to hold a capital markets services licence in respect of such regulated activity.

(3) Unless otherwise notified in writing by the Authority before the appointed date under regulation 4 of the Financial Advisers (Transitional and Savings Provisions) Regulations (Rg 1) —

- (a) a person who holds any of the following licences immediately before the appointed date shall, from that date, be deemed to hold a representative's licence in respect of the regulated activity or activities which that person was carrying on under the authority of the first-mentioned licence:
  - (i) a futures broker's representative's licence granted under Part III of the FTA;
  - (ii) a futures trading adviser's representative's licence granted under Part III of the FTA;
  - (iii) a futures pool operator's representative's licence granted under Part III of the FTA;
  - (iv) a dealer's representative's licence granted under Part IV of the SIA;
  - (v) an investment representative's licence granted under Part IV of the SIA;

(b) any condition or restriction —

- (i) to which any licence referred to in sub-paragraph (a)(i) to (v)

was subject immediately before the appointed date, to the extent that it is consistent with the provisions of the Act and these Regulations; or

- (ii) notified by the Authority under paragraph (4) to the holder of the licence,

shall be deemed to be a condition or restriction to which the corresponding representative's licence referred to in sub-paragraph (a) is subject.

(4) The Authority may, by notice in writing to a person who holds any of the licences referred to in paragraph (1)(a)(i) to (v) or (3)(a)(i) to (v), specify —

- (a) the date of expiry of the capital markets services licence or representative's licence which he is deemed to hold by virtue of paragraph (1) or (3);
- (b) the regulated activity or activities to which the capital markets services licence or representative's licence relates; and
- (c) any additional condition or restriction to which the capital markets services licence or representative's licence is subject.

(5) Where the Authority gives notice to a person of the date of expiry of a licence referred to in paragraph (4)(a), that licence shall expire on that date.

(6) Subject to paragraph (5) —

- (a) in the case of a person who holds one of the licences referred to in paragraph (1)(a)(i) to (v) or (3)(a)(i) to (v) immediately before the appointed date, the capital markets services licence or representative's licence which he is deemed to hold by virtue of paragraph (1), (2) or (3) (referred to in this regulation as the deemed licence) shall expire on the date of expiry of the first-mentioned licence; or
- (b) in the case of a person who holds more than one of the licences referred to in paragraph (1)(a)(i) to (v) or (3)(a)(i) to (v) immediately before the appointed date the dates of expiry of which are different, the deemed licence shall expire on the last of those dates.

(7) A reference in paragraph (6) to the date of expiry of a licence referred to in paragraph (1)(a)(i) to (v) or (3)(a)(i) to (v) is a reference to the date that licence would have expired but for the repeal of Part III of the FTA or Part IV of the SIA, as the case may be, by the Act.

(7A) Where a person who holds a dealer's licence under the SIA is deemed to hold a capital markets services licence by virtue of paragraph (1) or (2), any deposit lodged by

it under section 34 of the SIA immediately before the appointed date shall, from that date, be deemed to be a deposit lodged by it under section 91 of the Act.

(8) Subject to paragraphs (9), (10) and (11), a deemed licence may be renewed in accordance with section 84 of the Act.

(9) Notwithstanding section 84(1) of the Act, where a deemed licence expires in the same month as that of the appointed date, the deemed licence may be renewed if an application for its renewal is made not later than 2 months after the expiry of the deemed licence.

(10) Notwithstanding section 84(1) of the Act, where a deemed licence expires in the month immediately following that of the appointed date, the deemed licence may be renewed if an application for its renewal is made not later than one month after the expiry of the deemed licence.

(11) Section 84(6) and (7) of the Act shall not apply to an application for the renewal of a deemed licence made under paragraph (9) or (10).

(12) Where a person has applied for the renewal of a deemed licence in accordance with paragraph (9) or (10) —

- (a) he shall be entitled to carry on his business as if the licence has been renewed; and
- (b) he shall comply with the requirements of the Act as if he were the holder of such licence,

for the period from the date of expiry of the deemed licence until —

- (i) that licence is renewed; or
- (ii) his application for renewal is withdrawn or refused.

(13) An application made to the Authority before the appointed date for the renewal of a licence referred to in paragraph (1)(a)(i) to (v) or (3)(a)(i) to (v) which, but for the repeal of Part III of the FTA or Part IV of the SIA, as the case may be, would have expired after the appointed date shall, from that date, be deemed to have been withdrawn, and the Authority shall refund any fee paid in relation to such application to the applicant.

(14) This regulation shall not apply to any person referred to in paragraphs (a) to (h) of section 99(1) of the Act in respect of any regulated activity referred to in the paragraph concerned.

(15) For the avoidance of doubt, this regulation shall not apply in a case where the activity carried out by the person concerned immediately before the appointed date under a licence granted under the FTA or SIA is not a regulated activity.