
First published in the *Government Gazette*, Electronic Edition, on 2nd April 2013 at 5.00 pm.

No. S 192

**SECURITIES AND FUTURES ACT
(CHAPTER 289)**

**SECURITIES AND FUTURES
(FINANCIAL AND MARGIN REQUIREMENTS FOR
HOLDERS OF CAPITAL MARKETS SERVICES LICENCES)
(AMENDMENT) REGULATIONS 2013**

In exercise of the powers conferred by sections 86(3), 95(1)(b), 100, 337 and 341 of the Securities and Futures Act, the Monetary Authority of Singapore hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) (Amendment) Regulations 2013 and shall come into operation on 3rd April 2013.

Amendment of regulation 2

2. Regulation 2 of the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations (Rg 13) (referred to in these Regulations as the principal Regulations) is amended —

(a) by deleting the definition of “adjusted net head office funds” and substituting the following definition:

““adjusted net head office funds”, in relation to the holder of a licence, means its net head office funds after deducting the applicable items specified in —

(a) an MAS notice that applies to the holder;
and

(b) if a notice referred to in regulation 2C is given to the holder, that notice;”;

(b) by deleting the words “under paragraph 1 of the Second Schedule” in paragraphs (d) and (f) of the definition of “aggregate indebtedness”;

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- (c) by deleting the words “as defined in paragraph 4 of the Second Schedule” in paragraph (e) of the definition of “aggregate indebtedness”;
 - (d) by inserting, immediately before the word “irredeemable” in paragraph (a)(ii) of the definition of “base capital”, the word “paid-up”;
 - (e) by deleting the definitions of “commodity”, “counterparty”, “counterparty risk weight” and “customer” and substituting the following definition:

““customer” means a person —

- (a) on whose behalf the holder of a licence carries on or will carry on any regulated activity; or
- (b) with whom the holder of a licence enters or will enter into a transaction as principal —
 - (i) for the sale or purchase of securities;
 - (ii) for the sale or purchase of futures contracts; or
 - (iii) in connection with leveraged foreign exchange trading;”;
- (f) by deleting the definitions of “derivative”, “equity security”, “financial resources” and “forward contract” and substituting the following definition:

““financial resources” has the meaning given to that expression in regulation 2A;”;

- (g) by deleting the definitions of “government securities” and “guideline issued by the Authority” and substituting the following definition:

““irredeemable and non-cumulative preference share capital” means preference share capital consisting of preference shares that satisfy all of the following requirements:

- (a) the principal of the shares is perpetual;
- (b) the shares are not callable at the initiative of the issuer of the shares or the shareholders, and the principal of the shares is never repaid outside of liquidation of the issuer,

except in the case of a repurchase or other manner of reduction of share capital that is initiated by the issuer and permitted under written law; and

(c) the issuer has full discretion to cancel dividend payments, and —

(i) the cancellation of dividend payments is not an event of default of the issuer under any agreement;

(ii) the issuer has full access to cancelled dividend payments to meet its obligations as they fall due; and

(iii) the cancellation of dividend payments does not result in any restriction being imposed on the issuer under any agreement, except in relation to dividend payments to ordinary shareholders;”;

(h) by deleting the definition of “investment grade”;

(i) by deleting the definitions of “market index of a recognised group B exchange” and “money market debt securities” and substituting the following definition:

““MAS notice” means a notice issued by the Authority under regulation 2B;”;

(j) by deleting the definition of “physical commodity”;

(k) by deleting the definition of “qualifying letter of credit” and substituting the following definitions:

““qualifying letter of credit” means any legally enforceable and irrevocable letter of credit that is —

(a) made in favour of the approved exchange or designated clearing house (as the case may be) of which the holder of the licence concerned is a member;

(b) issued by a bank approved by, and in a form acceptable to, the approved exchange or designated clearing house; and

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- (c) subject to such conditions or restrictions as the Authority, or the approved exchange or designated clearing house, may impose on the holder,

but does not include any letter of credit provided by the holder to the approved exchange or designated clearing house to satisfy the business rules or other requirements of the approved exchange or designated clearing house;

“qualifying subordinated loan” means a subordinated loan the terms of which are evidenced by a subordinated loan agreement between the holder of the licence concerned and a lender (referred to in this definition as the subordinated creditor) which expressly provides all of the following:

- (a) the subordinated loan has not less than 2 years to maturity at the time the loan is first drawn down;
- (b) that the subordinated creditor shall not claim or receive from the holder, by way of set-off or in any other manner, any subordinated loan repayment until after every senior debt has been paid or unless the holder has obtained the prior written approval of the Authority;
- (c) that the claims of the subordinated creditor are fully subordinated to the claims of all senior creditors;
- (d) an option for the holder to defer interest payment on the principal amount of the subordinated loan;
- (e) that the subordinated loan shall automatically be converted into capital to provide a cushion for losses to creditors if an appropriate reconstruction of the capital of the holder which is acceptable to the Authority has not been undertaken;

- (f) that, in the event of any payment or distribution of assets of the holder, whether in cash, in kind or in securities (referred to in this definition as a distribution), upon any dissolution, winding-up, liquidation or reorganisation of the holder —
 - (i) the senior creditors shall first be entitled to receive payment in full of the senior debts before the subordinated creditor receives any payment in respect of the subordinated debt; and
 - (ii) any distribution to which the subordinated creditor would be entitled but for the provisions of the subordinated loan agreement shall be made by the liquidator, Official Assignee in bankruptcy or any other person making the distribution directly to the senior creditors rateably according to their senior debts until they have been paid in full (taking into account other distributions to the senior creditors);
- (g) a term that if, notwithstanding paragraphs (b) to (f), any distribution is received by the subordinated creditor in respect of the subordinated debt, the distribution shall be paid over to the senior creditors for application rateably according to their senior debts until they have been paid in full (taking into account other distributions to the senior creditors) and, until such payment has been made in full, the distribution shall be held in trust for the senior creditors;
- (h) such terms as may be specified in the business rules of an approved exchange or a designated clearing house of which the holder is a member;