

# **Monetary Authority of Singapore**

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## **GRANTING OF APPROVAL FOR ARRANGEMENTS UNDER PARAGRAPH 11, FIRST SCHEDULE OF THE FINANCIAL ADVISERS ACT (CAP. 110) [“FAA”]**

### **Consultation Paper**

**20 March 2003**

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## INTRODUCTION

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Under section 6(1) of the Financial Advisers Act (Cap. 110) ["FAA"], no person shall act as a financial adviser in Singapore in respect of any financial advisory service specified in the Second Schedule of the FAA, unless he is authorised to do so by a financial adviser's licence or is an exempt financial adviser.

2 Section 22(1) of the FAA provides that the licensing requirements shall not apply to any person specified in the First Schedule of the FAA. In particular, paragraph 11 in the First Schedule ["Paragraph 11"] allows a foreign company, whose provision of any financial advisory service is effected through its related corporation licensed under the FAA or exempted under section 23 (other than subsections (1)(f) and (2)), to do so without having to hold a financial adviser's licence as long as it is done under an arrangement approved by the Authority. Once such an approval is granted, it is the Authority's intention to also exclude employees of such foreign related corporation(s) from licensing requirements under the FAA for provision of financial advisory services specified under the arrangement.

3 The provision in Paragraph 11 recognises the changing business models and global character of financial institutions. Many such institutions in Singapore have mutually beneficial arrangements with related corporations outside Singapore that leverage on their global network and expertise, in order to better service their clients. Paragraph 11 provides the Authority with the regulatory flexibility and discretion to approve such arrangements as are not inconsistent with our objectives of promoting sound and vibrant financial markets, and preserving market integrity.

4 In line with our objectives and in consideration of the different types of arrangements that financial institutions would have with their foreign related corporation(s), the Authority proposes to amend the wording of Paragraph 11 along the lines of "a foreign company, whose provision of any financial advisory service is effected under an arrangement between the foreign company and its related corporation licensed under this Act or exempted under section 23 (other than subsections (1)(f) and (2)) and such arrangement is approved by the Authority."<sup>1</sup>

5 The Authority has received a number of queries on what constitutes an arrangement between a financial adviser and its foreign related corporation(s) that may be approved under Paragraph 11. This consultation paper aims to provide greater clarity on the Authority's approach in assessing applications for such approval, and seek comments from the industry on our proposed guidelines.

6 Arrangements involving the foreign branches or foreign head office of a financial adviser licensed under the FAA or exempted under section 23 (other than subsections (1)(f) and (2)), do not fall within the scope of Paragraph 11 because Paragraph 11 does not apply in such circumstances<sup>2</sup>. The Authority is currently reviewing whether a requirement for approval similar to that under Paragraph 11 should be extended to cases where financial advisory services are provided in Singapore by the foreign branches or foreign head office of a financial adviser exempted under section 23 (other than subsections (1)(f) and (2)). The results of the review will be released in due course.

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<sup>1</sup> Please note that the proposed wording is only in draft form and may be subject to change by the Authority and the Attorney-General's Chambers.

<sup>2</sup> Paragraph 11 applies only to arrangements involving foreign related corporation(s) of the financial adviser.

7 Paragraph 11 does not apply where members of the public in Singapore engage the services of a foreign company providing financial advisory services without having been solicited either by the foreign company or its Singapore related corporation licensed under the FAA or exempted under section 23 (other than subsections (1)(f) and (2)).

8 The Authority intends to review the legislation and to release further guidance on the application of Paragraph 11 to research reports prepared by a foreign company and distributed by a related Singapore corporation which is a licensed or exempt financial adviser.

9 We would like to invite you to forward your views and comments on our consultation paper to the following address by 19 April 2003. All submissions should include your name and the name of the company that you represent. Comments to this consultation paper may be made public if you do not indicate any objection for it to be published. The Authority expects to formalise the guidelines in May 2003.

10 If you have any query regarding this consultation paper, you may contact Ms Lim Mei Shern (Tel: 6229-9253 and fax: 6225-9766).

Financial Advisers and Insurance Intermediaries Division  
Market Conduct Department  
Monetary Authority of Singapore  
10 Shenton Way  
MAS Building  
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Attention: Ms Lim Mei Shern

or

Email: [para11@mas.gov.sg](mailto:para11@mas.gov.sg)

## APPROACH AND ASSESSMENT CRITERIA

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11 The Authority will take a facilitative approach to approval of arrangements between a licensed or exempt entity in Singapore ["Singapore entity"] and its foreign related corporation(s). We recognise that many such arrangements are part of legitimate business activity. At the same time, we do not intend for Paragraph 11 to encourage the establishment of entities in Singapore that are no more than shell companies, facilitate business practices or market conduct that could undermine regulatory integrity, or pose a risk to financial stability and market confidence.

12 In making an application for approval under Paragraph 11, the Singapore entity shall ensure that its foreign related corporation(s) meets the following criteria:

- i. it has maintained a good track record in the proposed financial advisory service for at least the last 3 years;
- ii. it possesses competence in the specific area of business that it is proposing to effect under an arrangement with the Singapore entity;
- iii. it discharges its duties in an efficient, honest and fair manner;
- iv. it maintains a good ranking in its home country; and
- v. it is subject to proper supervision by its home regulatory authority.

## **ROLES OF PARTIES UNDER THE ARRANGEMENT**

13 In assessing an application, the Authority will take into consideration the nature of the financial advisory services proposed to be effected under the arrangement, and the roles of the Singapore entity and its foreign related corporation(s) in relation to the arrangement. Since rules, regulations and market practices vary across the jurisdictions, the Authority may, for prudential reasons, give favorable consideration to arrangements where certain key processes, such as Advisory and Client Servicing<sup>3</sup>, of the financial advisory service provided are undertaken or controlled by the Singapore entity.

14 Please refer to Appendix I on how the Authority will view a proposed arrangement to provide a financial advisory service under the different scenarios. Reference to the term "Local" in Appendix I connotes that the process is undertaken by the Singapore entity while "Foreign" means that the process is provided by its foreign related corporation(s). Using Table 1 in Appendix I for illustration purpose, the provision of investment advice is segregated into two main processes, namely, Prospecting<sup>4</sup> and Advisory. For the purpose of approval under Paragraph 11, the Authority will view a proposed arrangement favorably if the key process of Advisory is undertaken by the Singapore entity. Although the Advisory process can be further broken down into the individual processes of know your client, needs analysis and product recommendation, the Authority considers there would be practical difficulties with these individual processes being separately provided by the Singapore entity and its foreign related corporation(s).

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<sup>3</sup> Client Servicing would include sales, marketing, solicitation, and other pre-contract and pre-transaction activities. Due to the wide range and definition of Client Servicing activities, applicants are required to furnish details and information of such activities to be provided by the Singapore entity.

<sup>4</sup> Prospecting refers to the process of searching for customers.

## **TARGET CLIENTELE**

15 The Authority will also take into consideration the type of customers that the business is targeting, including whether the customers are accredited, institutional or retail investors. Specifically where the arrangements are targeted at retail investors, the Singapore entity should have proper risk disclosure and put in place procedures for dealing with disputes or complaints. In addition, there should also be adequate procedures for appropriate record keeping and access to records kept overseas to ensure a proper audit trail.

16 Generally, the Authority would have less regulatory concerns about arrangements targeting accredited<sup>5</sup> and/or institutional investors<sup>6</sup> due to their ability to safeguard their own interests. In addition, the industry has raised questions on the regulatory treatment where accredited and/or institutional investors use Special Purpose Vehicles ("SPVs"), investment holding companies, trusts, partnerships and other legal structures as investment vehicles, and whether these vehicles could then be considered as meeting the test of accredited and/or institutional investors, in the context of our assessment under Paragraph 11. The Authority is in the process of reviewing the treatment of such entities.

## **APPLICATIONS**

17 The Authority also requires that the Singapore entity can, upon request, provide evidence of an arrangement between itself and the foreign related corporation(s). This may include a contractual agreement that sets out the obligations and responsibility of each entity under the arrangement. In addition, the Authority expects the Singapore entity to have in place good business practices, structures and controls for the proposed arrangement, as well as take the necessary steps to ensure that the foreign related corporations and their employees comply with all the relevant rules and regulations in this jurisdiction.

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<sup>5</sup> As defined under section 2(1) of the Securities and Futures Act.

<sup>6</sup> As defined under section 274 of the Securities and Futures Act.

18 All applications for approval under Paragraph 11 must state clearly the specific arrangement to be approved. A working guide on information to be included in the application is provided at [Appendix II](#). If an arrangement entails approval under Paragraph 11 and paragraph 9 in the Third Schedule of the Securities and Futures Act (Cap. 289), or involves more than one foreign related corporation or financial advisory service, the applicant may submit one application.

19 The Authority reserves the right to review the approval of any arrangement if there is material change in the circumstances of the arrangement, or as the Authority sees fit. Changes in the entities involved in the arrangement, types of financial advisory services provided, target clientele, and significant changes in the role of the Singapore entity are considered material.

## **REQUEST FOR COMMENTS**

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20 You are invited to comment on:

- a. The approach and assessment criteria for granting approval under Paragraph 11, and any other factors that the Authority should take into consideration;
- b. The application procedure, including information to be furnished under the application;
- c. The regulatory treatment of entities such as SPVs, investment holding companies, trusts, partnerships and other legal structures, where they are used by accredited and/or institutional investors as investment vehicles, and how best to assess whether these entities should be treated as accredited and/or institutional investors;

- d. The types and extent of changes to an arrangement that are sufficiently material to warrant a review of the approval granted under Paragraph 11.
  
- e. Any other issue raised by this consultation paper.

**PROPOSED ASSESSMENT OF APPLICATION FOR APPROVAL OF ARRANGEMENTS UNDER  
PARAGRAPH 11, FIRST SCHEDULE OF THE FINANCIAL ADVISERS ACT 2001 [“FAA”]**

**Table 1- Advising on Futures Contracts, Contracts or arrangements for the purposes of Foreign Exchange Trading/Leverage Foreign Exchange Trading, Life Policies, Securities including Collective Investment Schemes**

Type of Arrangement	Process Chain		Assessment
	Prospecting (searching for customers)  (1)	Advisory (know your client, needs analysis and product recommendation)  (2)	
1	Foreign	Local	Approve
2	Local	Foreign	The application would be viewed positively if: <ul style="list-style-type: none"> <li>• the foreign related corporation has the necessary expertise to provide Advisory</li> <li>• customers of proposed arrangement are restricted to accredited investors and institutional investors</li> </ul>
3	Local	Partly Local and Partly Foreign <sup>7</sup>	
4	Foreign	Foreign	Not Approve

<sup>7</sup> Advisory process undertaken by the Singapore entity with assistance by foreign related corporation(s) and vice-versa.

**Table 2 - Issuing or Promulgating Analyses or Reports**

Type of Arrangement	Process Chain		Assessment
	Producing Research Report	Distributing Report	
	(1)	(2)	
1	Local	Foreign	Approve
2	Foreign	Local	The application would be viewed positively if the Singapore entity takes responsibility
3	Foreign	Foreign	The application would be viewed positively if the foreign related corporation has the necessary expertise to provide Research

**Table 3 - Marketing of Collective Investment Schemes/Arranging Contract of Insurance in respect of Life Policies**

Type of Arrangement	Process Chain			Assessment
	Completing Order Form / Proposal Form (liaising with customer) <b>(1)</b>	Place Order with Fund Manager/ Insurance Co <sup>8</sup> <b>(2)</b>	Client Servicing (e.g. admin, queries) <b>(3)</b>	
1	Local	Local	Foreign	The application would be viewed positively if customers of proposed arrangement are restricted to accredited investors and institutional investors
2	Foreign	Local	Local	
3	Local	Foreign	Local	
4	Local	Foreign	Foreign	
5	Foreign	Foreign	Local	
6	Foreign	Local	Foreign	The application would be viewed positively if: <ul style="list-style-type: none"> <li>customers of proposed arrangement are restricted to accredited investors and institutional investors</li> <li>the foreign related corporation does not provide Advisory to the same clients</li> </ul>
7	Foreign	Foreign	Foreign	Not Approve

<sup>8</sup> This refers to process where the Singapore entity or foreign related corporation places the order with the fund manager / insurance company. Prior approval has been obtained from the Authority for placement with unregistered insurer / foreign fund.

**INFORMATION TO BE SUBMITTED IN THE APPLICATION FOR APPROVAL UNDER PARAGRAPH 11, FIRST SCHEDULE OF THE FINANCIAL ADVISERS ACT 2001 [“FAA”]**

This is intended to be a working guide to aid applicants in the preparation of their submissions. Applicants may furnish any additional information that is deemed to be relevant and useful in supporting their applications. Applications should be as concise as possible. If necessary, descriptions of transaction processes should be depicted in a flow chart.

Applications are to be made by the Singapore entity, should be comprehensive and cover all pertinent facts. The Authority should be notified immediately if there is any change in the information furnished in the application after it has been submitted for approval.

**A. General Information**

1. Name of foreign related corporation(s).
2. Name(s) of the Singapore entity that is relevant to this application. Please state whether the entity is licensed under the FAA or exempt under section 23 (other than subsections (1)(f) and (2)) of the FAA. (Please present information in a table format if there are more than two relevant Singapore entities)
3. Describe the relationship and shareholding structure between the foreign related corporation(s) and the Singapore entity. Please attach the organisation chart, and include any other related entities that are operating in Singapore. You are not required to provide detailed description of such other related entities unless they are part of the arrangement.

**B Information about the foreign related corporation(s)**

4. Date and place of incorporation.
5. Nature and scale of business.  
Describe the nature of business and provide the corporation's revenue/turnover for last 3 years.
6. Licensing status.  
Whether the foreign related corporation(s) is licensed, registered, approved or otherwise regulated, or exempted from licensing under the law in its country of origin. Please also include memberships with securities exchanges or futures exchanges.

For each licence, registration or membership, please specify:

- i. Licence / Registration / Membership Type
- ii. Name of Licensing Authorities / Exchanges
- iii. List of activities that are supervised / regulated by the foreign regulators / exchanges

**C Description of the financial advisory services provided by the foreign related corporation(s). (Please present your information separately if there are differences in the arrangement for retail investors and accredited and/or institutional investors.)**

7. For each of the financial advisory service that the foreign related corporation(s) intends to effect under an arrangement with the Singapore entity, please specify:
  - a. Details of financial advisory service to be provided.
  - b. Type of customers.  
Please state whether customers are accredited, institutional or retail investors, and provide an estimate of the percentage of each category.
  - c. Description of financial advisory service that the foreign related corporation(s) intends to provide under an arrangement with the Singapore entity, and whether any part of the financial advisory service is conducted by the foreign related corporation(s) directly with customers of the Singapore entity.  
Please indicate reasons why such financial advisory service is not provided by the Singapore entity.

- d. Whether the intended financial advisory service is regulated in the jurisdiction of the foreign company. If not, please state whether the financial advisory service is exempted from regulation.
- e. Reason(s) for the arrangement between the Singapore entity and the foreign related corporation(s) under this application.
- f. Whether there are adequate systems and controls in place that will ensure the soundness and integrity of the financial advisory service it provides.  
Please provide a brief description of such systems and controls.

**D The role of the Singapore entity under the Paragraph 11 arrangement**

- 8. Details on the role played by the Singapore entity under the arrangement.
  - a. Describe the processes of financial advisory services, and the extent of these financial advisory services, to be provided by the Singapore entity, as a subset of the overall process chain. You may include a process flow chart to describe the relevant processes.
  - b. Where applicable, describe the remuneration structure for the Singapore entity with respect to the transactions effected under the arrangement.
  - c. Highlight any potential conflicts of interests on the part of the Singapore entity that may arise as a result of the arrangement and explain how such conflicts will be resolved or mitigated.

**E Details on the legal procedures and contractual relationships derived from the arrangement<sup>9</sup>.**

- 9. Describe the contractual relationships between the Singapore customer, the Singapore entity and the foreign related corporation(s).
- 10. Details of risk disclosure and other disclosures to customers, such as the details of the arrangement between the Singapore entity and the foreign related corporation(s), where applicable.

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<sup>9</sup> Points E10 and E11 are not required to be furnished if the proposed arrangement only serves accredited and/or institutional investors.

11. Procedures for dealing with complaints from customers. Details of recourse available to customers should there be any fraud or negligence on the part of the Singapore entity and the foreign related corporation(s) relating to the customers' accounts.
12. Details of the types and frequency of reports, statements and other documents to be furnished to customers and whether the Singapore entity does the reconciliation and verification of reports and statements.

**F Other Information**

13. Any other information that is relevant to the application. Please provide supporting documents where possible.