

# CONSULTATION PAPER

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## Consultation Paper I on Draft Notices and Guidelines Pursuant to the Securities and Futures Act

MAS

Monetary Authority of Singapore

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## 1 Preface

1.1 The SF(A) Act was passed by Parliament on 9 January 2017. It provides MAS with legislative powers under the SFA to regulate market operators and capital markets intermediaries in respect of their OTC derivatives activities. It also introduces amendments aimed at enhancing regulatory safeguards for retail investors, enhancing the credibility and transparency of the capital markets, and strengthening MAS' ability to take enforcement action against market misconduct.

1.2 Given the wide-ranging amendments to the Securities and Futures Act ("SFA"), the Monetary Authority of Singapore ("MAS") will consult on draft Notices and Guidelines to support the implementation of the legislative amendments in two phases.

1.3 The proposals set out in this consultation are:

- (a) New Notice on Risk Fact Sheet for Contracts for Differences ("CFD Notice") and Guidelines on MAS Notice on Risk Fact Sheet for Contracts for Differences ("CFD Guidelines");
- (b) Amendments to SFA 04-N13 Notice on Risk-Based Capital Adequacy Requirements for Holders of Capital Markets Services Licences ("RBC Notice");
- (c) Amendments to MAS Notices 757<sup>1</sup>, 1105<sup>2</sup>, 109<sup>3</sup>, 816<sup>4</sup>, and SFA 04-N04<sup>5</sup>, all relating to the Lending of Singapore Dollar to Non-Resident Financial Institutions ("MAS Notice 757 and Equivalent Notices"); and
- (d) New Guidelines on the Interpretation of "Persons Who Commonly Invest" in Division 3 of Part XII of the SFA ("Common Investors Guidelines").

1.4 MAS invites comments from financial institutions and all interested parties.

**Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or**

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<sup>1</sup> Notice 757 Lending of Singapore Dollar to Non-Resident Financial Institutions.

<sup>2</sup> Notice 1105 Lending of Singapore Dollar to Non-Resident Financial Institutions.

<sup>3</sup> RMD 29-04 Notice 109 Lending of Singapore Dollar to Non-Resident Financial Institutions.

<sup>4</sup> Notice 816 Lending of Singapore dollar to Non-Resident Financial Institutions.

<sup>5</sup> SFA 04-N04 Notice on Lending of Singapore Dollar to Non-Resident Financial Institutions for Holders of Capital Markets Services Licence.

**both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.**

1.5 Please submit written comments by 3 November 2017 via email to [SFA FAA LegisConsult@mas.gov.sg](mailto:SFA_FAA_LegisConsult@mas.gov.sg). We would appreciate that you use this [template](#) for your submission to ease our collation efforts.

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## 2 Defined Terms

CFD	Contract for differences
CFD Notice	Notice on Risk Fact Sheet for Contracts for Differences
CFD Guidelines	Guidelines on MAS Notice on Risk Fact Sheet for Contracts for Differences
Common Investors Guidelines	Guidelines on the Interpretation of “Persons Who Commonly Invest” in Division 3 of Part XII of the SFA
CMS Licensee	A holder of a capital markets services licence that is granted under Section 86 of the SFA
Exempt Financial Institution	A person who is exempted under section 99(1)(a), (b) or (c) of the SFA from the requirement to hold a capital markets services licence
MAS	Monetary Authority of Singapore
MAS Notice 757 and Equivalent Notices	MAS Notices 757, 1105, 109, 816, and SFA 04-N04
NRFI	Non-resident financial institution
OTC	Over-the-counter
RBC Notice	Notice on Risk-Based Capital Adequacy Requirements for Holders of Capital Markets Services Licences
S\$	Singapore dollar
SFA	Securities and Futures Act (Cap. 289)
SF(A) Act	Securities and Futures (Amendment) Act 2017

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### 3 Introduction

3.1 The SF(A) Act was passed by Parliament on 9 January 2017. It provides MAS with legislative powers under the SFA to complete MAS' two-phase review to implement OTC derivatives regulatory reforms. It also introduces amendments aimed at enhancing regulatory safeguards for retail investors, enhancing the credibility and transparency of the capital markets, and strengthening MAS' ability to take enforcement action against market misconduct.

3.2 To support the implementation of these wide-ranging amendments, we will amend subsidiary legislation and other legislative instruments as well as provide interpretative guidance to reflect key amendments such as:

- (a) Changes to product definitions in Part I of the SFA;
- (b) Repeal and re-enactment of Part II of the SFA to apply the markets regime to OTC derivatives;
- (c) Changes to Part IV of the SFA and the Second Schedule to the SFA to extend the capital markets services licensing regime to OTC derivatives;
- (d) Changes to Division 3 of Part XII of the SFA which pertains to insider trading;
- (e) Changes to other Parts of the SFA, as well as the Financial Advisers Act, arising from the key changes above.

3.3 Pursuant to the changes introduced in the SF(A) Act, MAS is seeking comments on the following draft Notices and Guidelines:

- (a) *New CFD Notice and CFD Guidelines*  
The new CFD Notice sets out the requirement for CMS Licensees and Exempt Financial Institutions dealing in CFD with retail investors to provide a risk fact sheet to the retail investors. The accompanying CFD Guidelines provide guidance to assist CMS Licensees and Exempt Financial Institutions in preparing the risk fact sheet.
- (b) *Amendments to RBC Notice*  
The RBC Notice is being amended primarily to support the changes to product definitions in Part I of the SFA and changes to Part IV of the SFA and the Second Schedule to the SFA to extend the capital markets services licensing regime to OTC derivatives.

(c) *Amendments to MAS Notice 757 and equivalent Notices*

MAS is proposing to amend MAS Notice 757 and equivalent Notices, to take into account the change in the definition of “securities” in the SF(A) Act.

(d) *New Common Investors Guidelines*

The Guidelines seek to provide interpretative guidance for the statutory definition of Common Investor and its application in the insider trading provisions.

3.4 The draft Notices and Guidelines are set out in Annexes B to F, and the key areas are summarised in the following sections.

#### **4 New Notice on Risk Fact Sheet for CFDs and Guidelines to MAS Notice on Risk Fact Sheet for CFDs**

4.1 MAS had previously proposed to require CMS Licensees and EFIs to provide a risk fact sheet when dealing in CFDs with retail investors<sup>6</sup>. Since then, MAS had engaged industry and consumer associations extensively to develop the form and content of the risk fact sheet so that it is useful and relevant for retail investors.

4.2 The draft CFD Notice sets out the circumstances under which CMS Licensees and EFIs dealing in CFD with retail investors must provide a risk fact sheet. The draft CFD Notice also prescribes the format of the risk fact sheet and minimum information that must be included in the risk fact sheet. The accompanying CFD Guidelines provide further guidance to CMS Licensees and Exempt Financial Institutions when preparing the risk fact sheet, such as some examples of the responses to the questions included in the risk fact sheet. These new requirements will take effect when the SF(A) Act is operationalised.

4.3 The draft CFD Notice and CFD Guidelines are set out in Annex B and C respectively.

**Question 1.** MAS seeks comments on the proposed CFD Notice and CFD Guidelines.

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<sup>6</sup> Refer to MAS’ Consultation Paper (dated 28 May 2012) on [Review of Regulatory Framework for Unlisted Margined Derivatives Offered to Retail Investors](#), and MAS’ Response Paper (dated 14 March 2014) on [Review of Regulatory Framework for Unlisted Margined Derivatives Offered to Retail Investors](#).

## 5 Notice for Risk-Based Capital Adequacy Requirements for Holders of Capital Markets Services Licences

5.1 MAS is consulting on consequential amendments to the RBC Notice to effect the changes arising from the SF(A) Act, including changes to product definitions in Part I of the SFA, and changes to Part IV and the Second Schedule to the SFA to extend the capital markets services licensing regime to OTC derivatives.

5.2 The proposed amendments to the RBC Notice are set out in Annex D.

<b>Question 2.</b>	MAS seeks comments on the proposed amendments to the RBC Notice.
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## 6 Amendments to MAS Notice 757 and Equivalent Notices

6.1 MAS' policy on the lending of S\$ to NRFIs essentially limits the lending of S\$ to NRFIs for speculation in the S\$ foreign exchange market. The policy stems from MAS' use of the exchange rate as the principal tool of monetary policy, and is aimed at ensuring that the effective conduct of MAS' monetary policy is not compromised. This policy is articulated in MAS Notice 757 and Equivalent Notices, which are applicable to the classes of financial institutions as set out in the Table below.

**Table: MAS Notice 757 and Equivalent Notices**

Notice	Class of FI which Notice applies to
MAS 757	Banks (except Representative offices)
MAS 1105	Merchant Banks
MAS 109	Insurers (except captive insurers)
MAS 816	Finance Companies
SFA 04-N04	CMS Licensees that conduct dealing in securities

6.2 In the SF(A) Act, the new definition of "securities" comprises solely of either equity instruments representing legal or beneficial ownership interests, or debt instruments, and excludes any unit in a collective investment scheme and securities-



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based derivatives contracts<sup>7</sup>. Accordingly, MAS intends to make amendments to update the references to “*securities*” in MAS Notice 757 and Equivalent Notices. The proposed amendments are set out in Annex E.

*Scope of application of SFA 04-N04 and definition of “residents” in paragraphs 2.1.4(b)(v) of MAS Notice 757 and Equivalent Notices*

6.3 SFA 04-N04 currently applies to CMS licensees that are “*regulated to conduct dealing in securities*”. To broadly retain the current scope of application and to achieve a consistent application of the Notice across all securities trading activities (including futures contracts on securities), MAS proposes to apply SFA 04-N04 to “*holders of capital markets services licenses to carry on a business of dealing in capital market products*” that are securities, units in a collective investment scheme, or securities-based derivatives contracts. Paragraphs 2.1.4(b)(v) of MAS Notice 757 and Equivalent Notices will also be amended to reflect this change.

6.4 For the avoidance of doubt, SFA 04-N04 will not apply as long as a CMS licensee does not deal in securities-based derivatives contracts, even if its CMS licence permits the dealing in capital markets products that are exchange-traded derivatives contracts or OTC derivatives contracts.

*Definition of “financial institutions” in paragraphs 2.1.2(f) of MAS Notice 757 and Equivalent Notices*

6.5 Paragraphs 2.1.2 of MAS Notice 757 and Equivalent Notices sets out the definition of “*financial institutions*”, and provides various examples of entities considered to be carrying on businesses in financial services. In particular, paragraphs 2.1.2(f) lists “*securities dealing*” as an example of a financial service.

6.6 With the new definition of “*securities*” under the SF(A) Act, “*securities dealing*” in paragraphs 2.1.2 (f) may be misconstrued to be limited to dealings in only equity or debt instruments. MAS proposes to replace “*securities dealing*” with “*dealing in capital*”

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<sup>7</sup> The current definition of “*securities*” includes non-futures securities-based derivatives contracts, specifically “any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in – (i) the value or price of any such debentures, stocks or shares; (ii) the value or price of any group of any such debentures, stocks or shares; or (iii) an index of any such debentures, stocks or shares” as well as “any derivative of a unit in a business trust”. These will be excluded in the new definition of “*securities*” in the SF(A) Act.

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*market products*”, so as to retain a broad reference to financial services in line with the application of paragraphs 2.1.2 of MAS Notice 757 and Equivalent Notices.

- Question 3.** MAS seeks comments on the proposed amendments to MAS Notice 757 and Equivalent Notices, including –
- a. the scope of application of SFA 04-N04 and paragraphs 2.1.4(b)(v) of MAS Notice 757 and Equivalent Notices in relation to the definition of “*residents*”; and
  - b. paragraphs 2.1.2(f) of MAS Notice 757 and Equivalent Notices in relation to the definition of “*financial institutions*”.

## 7 Common Investors Guidelines

7.1 Among other things, the SF(A) Act introduced amendments to Division 3 of Part XII of the SFA, pertaining to insider trading. This includes a statutory definition for “*persons who commonly invest*” (hereinafter referred to as “*Common Investors*”<sup>8</sup>) in section 214 of the SFA, which term is used in various insider trading provisions in Division 3.

7.2 The Common Investors Guidelines seek to provide interpretative guidance for the statutory definition of Common Investor and its application in the insider trading provisions. MAS intends to operationalise the Common Investors Guidelines with the commencement of the SF(A) Act.

7.3 The draft Common Investors Guidelines are set out in Annex F.

### *Different classes of investors*

7.4 The SF(A) Act introduces a statutory definition for Common Investors in section 214 of the SFA, defined as the “*section of the public that is accustomed, or would be likely to deal in*” the relevant products. The Common Investors Guidelines will make clear that Common Investors may comprise different classes of investors depending on the product in question.

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<sup>8</sup> The term “*Common Investor*” was coined by the Court of Appeal in *Lew Chee Fai Kevin v Monetary Authority of Singapore* [2012] 2 SLR 913 at [58].

7.5 Depending on a product's investment risk level, complexity, cost of investment, accessibility and any applicable regulatory restriction, the class(es) of Common Investors may differ from product to product. The Common Investors Guidelines do not seek to prescribe the specific class(es) of Common Investors for any particular product, but rather set out the intended approach to determining the Common Investors for any particular product.

**Question 4.** MAS seeks comments on the approach of making clear that the Common Investors can comprise different classes of investors, though the Common Investors Guidelines do not seek to prescribe the specific classes of Common Investors for any particular product.

#### *Characteristics of Common Investors*

7.6 When determining liability for insider trading, the Court will take reference from the hypothetical Common Investors to determine whether a piece of information is generally available or price-sensitive, pursuant to sections 215 and 216 of the SFA respectively. To this end, the characteristics of the Common Investors are of critical importance to the Court's assessment of liability for insider trading.

7.7 Rather than provide exhaustive guidance on the characteristics of each class of Common Investors, MAS intends to set out in the Common Investors Guidelines the following set of knowledge descriptors and abilities that would describe retail investors, who make up a sizeable proportion of the investing public:

- (a) They would be rational and economically motivated investors with at least some experience and knowledge of investing in the relevant financial product, but who may not be investment professionals;
- (b) They would be aware of the prevailing price of the relevant financial product from time to time; and
- (c) They would have knowledge of or the ability to obtain generally available information concerning the company or issuer in question, and would have the ability to draw inference from and assess the credibility of the information in question.

7.8 In MAS' view, these characteristics could also apply to accredited investors, expert investors and institutional investors, though these classes of investors are also likely to possess the qualities of "general professional knowledge" as described by the Court of Appeal in *Lew Chee Fai Kevin v Monetary Authority of Singapore* [2012] 2 SLR 913 at [82].

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**Question 5.** MAS seeks comments on the proposed characteristics of retail investors.

*Making information available to all classes of Common Investors*

7.9 Through the Common Investors Guidelines, we intend to make it clear that for information to be considered generally available under section 215(b)(i) of the SFA, the test to be applied is whether the information has been made known in a manner that would, or would be likely to, bring it to the attention of all classes of Common Investors for the relevant product.

**Question 6.** MAS seeks comments on the test that for information to be considered generally available, it must be made known to all classes of Common Investors.

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**Annex A**

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