# MAS ISSUES REVISED TAKE-OVER CODE

The Monetary Authority of Singapore ("MAS"), on the advice of the Securities Industry Council ("SIC"), today issued a revised Singapore Code on Take-overs and Mergers ("Take-over Code") pursuant to section 321 of the Securities and Futures Act. This follows two rounds of public consultation by the SIC in November 1999 and May 2001 on proposed changes to the Take-over Code.

**KEY CHANGES**

2 The revised Take-over Code incorporates feedback received from market participants as well as best practices from other jurisdictions. The key changes are as follows:

3 Scope: The revised Take-over Code will apply only to take-over offers for:-

a) listed companies; and

b) unlisted public companies with 50 or more shareholders and net tangible assets of $5 million or more.

The Take-over Code will not apply to other unlisted public companies.

4 Thresholds for Mandatory Offers (Rule 14.1): The voting control levels at which a take-over offer is required to be made have been changed in line with international trends. Under the revised Take-over Code, a person will be required to make a general offer for a public company if:-

a) he acquires 30% (instead of 25% now) or more of the voting rights of the company; or

b) he already holds between 30% and 50% of the voting rights of the company, and he increases his voting rights in the company by more than 1% in any 6-month period (instead of 3% in 12 months now).

5 Minimum Offer Price (Rule 14.3): Currently, an offeror who incurs an obligation to make a take-over offer must pitch the offer at the highest price paid by

him and his concert parties for offeree company shares in the preceding 12 months. In view of increasingly volatile markets, the revised Code shortens the price reference period to 6 months to strike a better balance between market efficiency and equity.

6 Offer Timetable (Rule 22): The offer timetable has been amended to require the offeror to post the offer document within 21 days (instead of 28 days now) of the offer announcement and keep the offer open for at least 28 days (instead of 21 days now). This will give more time for the offeree company and its shareholders to consider an offer.

7 Pro rata Distribution of Shareholdings in a Downstream Company by an Upstream Company to its Shareholders (Note 7 on Rule 14.1): There may be occasions when an upstream company distributes its shareholdings in a downstream company to shareholders in the upstream company on a pro rata basis. The revised Take-over Code clarifies that an upstream shareholder who acquires or consolidates effective control in the downstream company as a result of such a distribution will not incur an obligation to make a general offer for a downstream company if:-

a) he owns or controls more than 50% of the upstream company; or

b) he is not acting in concert with any director of the upstream company.

8 In all other cases, the upstream shareholder may:-

a) seek downstream shareholders' approval to waive the requirement for him to make a general offer for the downstream company;

b) divest his shareholdings to within the mandatory offer thresholds (see paragraph 4 above) or to his minimum aggregate effective interest[1] in the downstream company during the last 3 years, whichever is higher; or

---

[1] Aggregate effective interest includes direct interest as well as pro-rata indirect interest held via the upstream company. Indirect interest is to be computed by multiplying the minimum percentage voting rights of the upstream shareholder in the upstream company in the last 3 years by the upstream company's voting rights in the downstream company which will be distributed. For example, if the upstream company is distributing 60% of the downstream company's voting rights (out of its total holdings of 80%) and the minimum percentage voting rights of the upstream shareholder in the upstream company in the last 3 years is 40%, his indirect interest in the downstream company is 24% (40% times 60%).

c) make a general offer for the downstream company.

9 Conditional Agreements (Note 1 on Rule 14.2): Currently, a person who enters into a conditional share acquisition agreement, which upon completion would trigger a mandatory offer, is required to post the offer document within two months of entering into such an agreement. A put-and-call option agreement, on the other hand, is not subject to this restriction. The revised Take-over Code removes the two-month deadline for conditional share acquisition agreements and harmonises the requirements for the two different types of agreement as follows:-

a) upon entering into a conditional share acquisition agreement or a put-and-call option agreement, the potential offeror must announce immediately his identity, the terms of the potential offer, the conditions to be fulfilled before the offer is made, and the time period for the fulfilment of these pre-conditions;

b) the pre-conditions should be objective and reasonable and the time period for fulfilling them should be reasonable; and

c) the potential offeror cannot invoke any condition to cause the agreement to lapse unless he has demonstrated reasonable efforts to fulfil that condition and the circumstances that caused the non-fulfillment of that condition are material in the context of the proposed transaction.

10 Schemes of Arrangement: Schemes of arrangement may be exempted from selected provisions of the revised Take-over Code, such as those relating to the offer timetable and terms of the offer, subject to conditions. The key safeguards include:-

a) existing common substantial shareholders (i.e. those who hold 5% or more interests in both the companies to the scheme of arrangement) as well as those persons and their concert parties who after the scheme may acquire or consolidate effective control in a scheme company (and/or a new entity that holds one or both of the scheme companies) to abstain from voting on the scheme. If such persons are

directors of a scheme company, they are to abstain from making a recommendation to shareholders of that scheme company on the scheme;

b) where a person will after the scheme acquire or consolidate effective control in a scheme company (and/or a new entity that holds one or both of the scheme companies), to disclose in the scheme document his name , his current voting rights in the scheme company, his voting rights in the scheme company and/or new entity after the scheme, as well as details of his dealings in shares of the scheme company during the 3 months preceding the scheme. The scheme document must also state that by voting for the scheme, shareholders are agreeing to the person acquiring or consolidating effective control in the company without having to make a general offer; and

c) the scheme company which is in effect the offeree company to appoint an independent financial adviser to advise its shareholders on the scheme. Where the scheme of arrangement involves a reverse take-over offer or a "merger of equals", each of the scheme companies is to appoint an independent financial adviser to advise their respective shareholders on the scheme.

**IMPLEMENTATION DATE AND TRANSITIONAL PROVISIONS**

11 The revised Take-over Code will take effect on 1 Jan 2002, when Part VIII of the Securities and Futures Act on the Securities Industry Council and Take-over Offers is due to come into operation. Concurrently, sections 213 and 214 as well as the Tenth Schedule of the Companies Act, which relate to take-over offers, will be repealed.

12 Take-over offers already made or announced to the public before 1 Jan 2002 will continue to be governed by the current take-over provisions in the Companies Act and the existing Take-over Code.

**CODE UPDATES AND NOTES**

13 The SIC will review periodically the Take-over Code, taking into account market feedback and international best practices. Where necessary, the SIC will issue notes on the application of the rules or recommend to MAS to revise certain provisions.

* * *

For media enquiries, please contact:

Mr Daniel Teo
Assistant Secretary
Tel: 2299830
Email: danielteo@mas.gov.sg

Ms Teo Lin
Assistant Secretary
Tel: 2299882
Email: teolin@mas.gov.sg