

CONSULTATION PAPER

13 October 2021

Consultation Paper on Proposed Amendments to Appeals Regulations

MAS

Monetary Authority of Singapore

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1 Preface

1.1 As integrated regulator and supervisor of the financial industry, one of the principal objectives of the Monetary Authority of Singapore (“**MAS**”) is to foster a sound and reputable financial centre. To achieve this objective, MAS takes various supervisory and regulatory actions in respect of breaches of the laws and regulations under MAS’ purview.

1.2 Under the relevant Acts administered by MAS, there is provision for persons¹ who are the subject of certain decisions of the MAS to appeal to the Minister.² In some of these appeals, the Minister must constitute an appeals advisory committee to study the materials and make recommendations to the Minister.

1.3 The rules governing appeals involving an appeal advisory committee are set out in regulations under the respective Acts (“**Appeals Regulations**”), namely:

- (a) the Securities and Futures (Appeals) Regulations;
- (b) the Financial Advisers (Appeals) Regulations;
- (c) the Business Trusts (Appeals) Regulations;
- (d) the Insurance (Appeals) Regulations; and
- (e) the Trust Companies (Appeals) Regulations.

1.4 MAS is proposing amendments to the Appeals Regulations.³ Through these amendments, MAS is seeking to strengthen the appeal process by making it more efficient, fair and practical.

¹ A person includes a natural person or a corporate entity.

² These include, for example, MAS’ decisions to withdraw or suspend a licence or regulatory status, remove an office holder from his position in a financial institution, or issue a prohibition order.

³ As the provisions of each of the Appeal Regulations are substantially the same, MAS is proposing similar amendments to each of the Appeals Regulations. However, as the proposed amendments are extensive and would require a reorganisation of the current Appeals Regulations, MAS proposes to revoke the current Appeals Regulations and issue new appeals regulations instead. The proposed provisions will also be mirrored in the appeal regulations to be issued under the Credit Bureau Act.

1.5 **Annex A** sets out the list of questions asked in this paper. **Annex B** sets out the proposed provisions of the new Securities and Futures (Appeals) Regulations.

1.6 MAS invites comments from the members of the public.

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 (but not their identity), or**
- (ii) their identity along with their whole submission,**

to be kept confidential, please expressly state so in the submission to MAS. MAS will only publish non-anonymous submissions. 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.

1.7 Please submit written comments by 15 December 2021 to –

Organisation Development & Communications Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
Fax: (65) 62203973
Email: Appeals_Reg_Consultation@mas.gov.sg

1.8 Electronic submission is encouraged. We would appreciate that you use this suggested format [[Template](#)] for your submission to ease our collation efforts.

2 OVERVIEW OF THE PROPOSED AMENDMENTS

2.1 Where an appeal against MAS' decision lies to the Minister and the Minister is required to refer the appeal to an Appeal Advisory Committee ("AAC"),⁴ the rules governing the processes relating to the appeal are set out in the Appeals Regulations. Typically, the appellant has to file a petition of appeal (also referred to as the appellant's "case"), MAS has to file its reasons for the decision being appealed against (also referred to as the MAS' "case"), and the parties may have to file additional documents including witness statements, expert reports, supporting documents and additional submissions that may be required by the AAC. The AAC then hears the appeal and makes recommendations to the Minister on the issues in the appeal. The Minister makes a decision on the appeal after considering the recommendations of the AAC.

2.2 MAS is proposing amendments to the Appeal Regulations, relating to:

- (a) Part A: Filing of the parties' respective cases
 - (i) Order in which the parties file their cases
 - (ii) Timelines for the parties to file their cases
- (b) Part B: AAC's powers to conduct the appeal
 - (i) Case management conference
 - (ii) Timeframe to conduct hearing
 - (iii) Form of hearing
- (c) Part C: Miscellaneous matters
 - (i) Consolidation of appeal proceedings

⁴ The AAC members are selected from a panel called the Appeal Advisory Panel ("AAP"). The AAP is a panel appointed by the Minister, which comprises members from the financial services industry, and the public and private sectors. The Minister also usually appoints a Secretary, who provides administrative and secretarial support to the Minister, AAP and any AAC. The support includes serving as a channel for all communications with the Minister, the AAP or any AAC, and co-ordinating and attending hearings of an AAC.

- (ii) Confidential treatment of documents
- (iii) Summary of parties' arguments

3 PART A: FILING OF THE PARTIES' RESPECTIVE CASES

Order in which the parties file their cases

3.1 After an appeal is lodged, the appellant and MAS are required to file their respective cases in the appeal. The current Appeal Regulations stipulate that the appellant files his petition of appeal first, followed by MAS filing its reasons for the decision being appealed against. MAS' reasons for its decision at this stage are usually more detailed than the grounds stated in the Notice of Intention.⁵ This procedure means that when the appellant crafts his petition of appeal, he does so without the benefit of having MAS' reasons for its decision.

3.2 In practice, appellants have often requested and are allowed by the AAC to file reply submissions after reviewing MAS' case. While this promotes fairness by giving the appellant an opportunity to respond to MAS' detailed reasons for its decision, it also prolongs the appeal process.

3.3 Thus, MAS proposes that the order in which the parties file their respective cases be reversed i.e. MAS files its case first, and the appellant files his case thereafter. This would be a more efficient process that still ensures fairness by giving the appellant the opportunity to review and respond fully to MAS' detailed reasons.

Timelines for the parties to file their cases

3.4 MAS also proposes to extend the amount of time that both parties have to file their respective cases to 28 days. Currently, under the Appeal Regulations, the appellant has 21 days to file his case, and MAS has 14 days to file its case. The existing timelines can

⁵ Prior to MAS' decision to take action against an appellant, MAS would have informed him of its intention to take this course of action, along with the legal and factual grounds for MAS' intended action, in a Notice of Intention, or "NOI". The primary objective of the NOI is to give the subject sufficient information about the intended course of action, so that the subject may provide a response (if he wishes to) setting out reasons why MAS should reconsider its intended course of action.

be challenging to meet, particularly in complex cases which may require extensive preparation.

3.5 Thus the proposed procedure and timelines for the filing of cases is as follows:

- (a) MAS is to file its case within 28 days of the appellant lodging the notice of appeal; and
- (b) The appellant is to file his case within 28 days of MAS filing its case.

Question 1. MAS seeks comments on the proposed amendments to the order in which the parties file their respective cases.

Question 2. MAS seeks comments on the proposed amendments to the timelines for parties to file their respective cases.

4 PART B: AAC'S POWERS TO CONDUCT THE APPEAL

4.1 The current Appeal Regulations provide fixed timelines for the submission of additional information or documents and for the parties to notify the secretary of the AAC of the witnesses that they propose to call upon to give evidence before the AAC. These timelines are the same regardless of the complexity of a case, and there is no mechanism specifically provided for in the Appeal Regulations to extend or vary these timelines. In more complex cases, therefore, parties may find it challenging to meet the fixed timelines prescribed in the Appeal Regulations.

4.2 Further, some appeals may be straightforward and may not require a hearing in person. Under the current Appeal Regulations, however, the AAC does not have the power to conduct a hearing by way of written submissions. The AAC also does not have the explicit power to conduct a hearing by way of video conference.

4.3 Hence, in order to enable the AAC to exercise greater flexibility to accommodate the needs of different types of cases of varying complexities, MAS is proposing the following amendments to the Appeal Regulations:

(a) Case management conference:

Instead of having fixed timelines in the Appeal Regulations for the submission of documents and lists of witnesses, MAS proposes to include in the Appeal Regulations the concept of a case management conference, during which the AAC gives directions taking into consideration the views of the parties. These would include directions on timelines for the filing of submissions, documents and witness statements, calling of witnesses, evidence that may be required, and the timetable leading up to the hearing. This allows for full flexibility to accommodate the specific needs of each case.

MAS also proposes that the AAC be given flexibility to decide, taking into consideration the parties' views, the form or manner in which the case management conference should be conducted – whether via physical meeting, video conference, or written correspondence.

(b) Timeframe to conduct hearing:

Currently, the hearing of an appeal must be conducted within 28 days of the constitution of the AAC. MAS proposes to amend this timeframe, to enable the AAC to conduct the hearing within 42 days of the appellant filing his case. This would give the AAC greater flexibility to set a suitable hearing date that is appropriate to the complexity of the case. MAS also proposes to introduce provisions for the Minister to be able to extend the 42-day time limit where required.

(c) Form of hearing:

In order to save time and resources in straightforward appeals, MAS proposes to give the AAC the power to conduct a hearing by way of written submissions instead of an oral hearing.⁶ MAS also proposes to give the AAC the explicit power to conduct a hearing by way of video conference.

⁶ These include, for example, appeals in which the parties are not calling any witnesses and which only involve documents.

- Question 3.** MAS seeks comments on the proposed introduction of a case management conference, and the form or manner in which it should be conducted.
- Question 4.** MAS seeks comments on the proposed amendments to the timeframe to conduct the hearing of an appeal.
- Question 5.** MAS seeks comments on the proposal to give the AAC the power to conduct hearings by way of written submissions or video conference.

5 PART C: MISCELLANEOUS MATTERS

Consolidation of appeal proceedings

5.1 In practice, there may be cases in which appeals arise out of closely connected decisions of the MAS. For example, MAS may have issued POs against two individuals who conspired with each other to commit market misconduct offences, and both individuals may have appealed against those decisions. However, the current Appeal Regulations do not provide a mechanism to hear and deal with the two appeals together, even though both involve similar facts and/or issues.

5.2 MAS therefore proposes to provide the AAC with the power to order appeal proceedings to be consolidated and heard together. This would facilitate the efficient and consistent consideration by the AAC of closely connected decisions of MAS.

Confidential treatment of documents or information

5.3 Currently, under the Appeal Regulations, MAS may withhold the disclosure of information to an appellant if MAS is of the view that it is not in the public interest to furnish such information to the appellant. This decision to withhold information lies solely with MAS. The AAC cannot compel disclosure even if it is of the view that there is no basis for treating the information as confidential, although it may disregard the information.

5.4 To ensure that there is a proper and fair basis for claiming protection from disclosure, MAS proposes that the current Appeal Regulations be amended as follows:

- (a) In the event MAS wishes to withhold the disclosure of a document or information from the appellant, MAS must make a request to the AAC that it be allowed to do so;
- (b) In its request, MAS must show that the document or information contains (i) sensitive information, the disclosure of which would pose a risk to national security and/or (ii) confidential information, the disclosure of which would be injurious to public interest;
- (c) The AAC will consider MAS' request, and write to the Minister with its recommendations on whether the document or information should be withheld from the appellant, and whether a summary of the document or information should be provided to the appellant;
- (d) The Minister will, after considering the recommendations of the AAC, make a decision on whether MAS should disclose the document or information, disclose a redacted version of the document or a part of the information, or provide a summary of the document or information to the appellant.

Summary of parties' arguments

5.5 In practice, after the hearing of an appeal, the parties respectively submit closing submissions to the AAC. In the closing submissions, the parties usually set out, in detail, the circumstances in which the appeal arises, the arguments for or against the appeal and the legal authorities in support of their respective cases. As a result, the parties' closing submissions are usually relatively long.

5.6 MAS therefore proposes that each of the parties submit a summary of their respective arguments to the AAC at the close of an appeal hearing, and that these summaries be included in the AAC's report to the Minister⁷. This will provide the AAC and the Minister with an overview of the key issues and arguments raised during the appeal.

⁷ The AAC's report to the Minister contains the AAC's recommendations in the appeal and the grounds upon which the AAC relied in making its recommendations.

Question 6. MAS seeks comments on the proposal to give the AAC the power to consolidate appeal proceedings.

Question 7. MAS seeks comments on the proposed amendments to the confidential treatment of documents or information.

Question 8. MAS seeks comments on the proposal that each party submits a summary of their respective arguments to the AAC at the close of an appeal hearing.

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SECURITIES AND FUTURES (APPEALS) REGULATIONS 2019

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SECURITIES AND FUTURES ACT
(CHAPTER 289)
SECURITIES AND FUTURES (APPEALS) REGULATIONS 2019

In exercise of the powers conferred by section 313 of the Securities and Futures Act, the Senior Minister hereby makes the following Regulations:

PART I

PRELIMINARY

Citation and effective date

1. These Regulations are the Securities and Futures (Appeals) Regulations 2020 and come into operation on [insert date].

Definitions

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

“Appeal Advisory Committee” means an Appeal Advisory Committee constituted under section 310 of the Act, where an appeal is made to the Minister under the Act;

“Appeal Advisory Panel” means the Appeal Advisory Panel appointed under section 311 of the Act;

“appellant” means any person who wishes to appeal under the Act to the Minister;

“decision” includes any action by or direction of the Authority appealed against;

“party” means the appellant or the Authority;

“secretary” means any person(s) appointed as the secretary of the Appeal Advisory Panel under regulation 3(1).

Secretary of Appeal Advisory Panel

3. — (1) The Minister may appoint one or more officers or employees of the Authority, either by name or by office, to be the secretary of the Appeal Advisory Panel.

(2) The secretary must —

- (a) provide administrative and secretarial support (including but not limited to the matters set out at paragraph (5) below) to the Minister, the Appeal Advisory Panel or any Appeal Advisory Committee in the performance of its functions; and

- (b) be the channel for all communications between the parties and the Minister, the Appeal Advisory Panel or any Appeal Advisory Committee.

(3) A party must communicate with, and send all documents and material to, any Appeal Advisory Committee or the Minister, where applicable, through the secretary.

(4) The secretary must, as soon as practicable upon receipt of any communication, document or material referred to in paragraph (3) above, forward them to the Appeal Advisory Committee or Minister (or his legal representative) as applicable.

(5) The secretary may co-ordinate the date, time and place of any meeting, hearing, or case management conference of any Appeal Advisory Committee, and attend such meeting, hearing or case management conference.

Members of Appeal Advisory Committee

4. — (1) Every Appeal Advisory Committee must consist of —

- (a) a chairman; and
- (b) 2 or more other members,

as the Minister may appoint from the members of the Appeal Advisory Panel.

(2) The Minister may appoint an alternate chairman from among the members and, in the absence of the chairman, the alternate chairman has all the powers conferred on the chairman by these Regulations.

(3) A member of an Appeal Advisory Committee must declare to the Minister the nature and extent of all conflicts of interest or potential conflicts of interest, if any, with his duties or interests as a member of that Committee, including those arising from —

- (a) his holding of any office;
- (b) his interest in any contract;
- (c) his possession or ownership of any property; or
- (d) any direct or indirect relationship to the appellant.

(4) Where the Minister is satisfied that the chairman, the alternate chairman or any other member of an Appeal Advisory Committee is unable to carry out his duties properly and effectively because of any conflict of interest or potential conflict of interest referred to in paragraph (3), the Minister may replace the chairman, alternate chairman or other member, as the case may be.

Meetings and hearings of Appeal Advisory Committee

5. — (1) The quorum of any meeting or hearing of an Appeal Advisory Committee is 2 persons, of whom one must be the chairman or alternate chairman, and a meeting or hearing must not proceed unless such a quorum is present.

(2) An issue before an Appeal Advisory Committee must be decided by a majority of votes, and in the case of an equality of votes, the chairman has a casting vote.

PART II

APPEALS

Division 1 – Commencing appeal proceedings

Commencement of appeals

6. — (1) An appeal to the Minister under the Act must be made by lodging with the secretary within the period stipulated in the relevant provision of the Act, a notice of appeal.

(2) The notice of appeal must be addressed to the “Secretary to the Appeal Advisory Panel” and sent:

- (a) via electronic mail to “AAP_Secretariat@mas.gov.sg”;
- (b) to 10 Shenton Way, MAS Building, Singapore 079117; or
- (c) such other address as may be notified, from time to time, in the *Gazette*.

(3) The notice of appeal must be in Form 1 of the Schedule. The notice of appeal must be signed and dated by the appellant, or on his behalf by his authorised representative or legal representative, and must provide the details required therein, including –

- (a) the name and address of the appellant;
- (b) the name and address of the appellant’s authorised representative or legal representative, if any;
- (c) an address in Singapore and an email address, if any, for the service of documents; and
- (d) a brief description of the decision appealed against, whether the appeal is against the entire, or only part of the, decision of the Authority, and brief grounds for the appeal.

(4) The secretary must, as soon as practicable upon receipt of the notice of appeal, forward that document to the Minister and a copy of that document to the Authority.

(5) The Minister must, within 28 days of receiving the notice of appeal, constitute an Appeal Advisory Committee.

(6) When the Minister constitutes the Appeal Advisory Committee, the secretary must refer the appeal to the Appeal Advisory Committee by immediately sending a copy of the notice of appeal to the Appeal Advisory Committee.

(7) The secretary must, immediately after referring the appeal to the Appeal Advisory Committee under regulation 6(6), notify the Authority and the appellant that an appeal against the decision of the Authority has been referred by the Minister to the Appeal Advisory Committee.

Authority's reasons

7. — (1) The Authority must, within 28 days from the date on which it receives the notice of appeal from the secretary under regulation 6(3), send the reasons for its decision to the secretary, and copy the appellant.

(2) The secretary must, as soon as practicable upon receipt of the reasons, forward that document to the Appeal Advisory Committee.

(3) The reasons under paragraph (1) must –

- (a) state the name and address of the Authority;
- (b) contain –
 - (i) a concise statement of the facts;
 - (ii) a summary of the grounds for the decision of the Authority;
 - (iii) the arguments of fact or law upon which the Authority will rely; and
 - (iv) the outcome sought by the Authority;
- (c) subject to regulation 22, be accompanied by any supporting document referred to in the reasons or relied on in support of the reasons; and
- (d) be signed and dated by the duly authorised officer of the Authority.

(4) The following person(s) may in their discretion extend the time limit provided under paragraph (1), on the application of the Authority within the time limit provided under paragraph (1):

- (a) the Appeal Advisory Committee, if it has been constituted at the time of the Authority's application;

- (b) the Minister, if the Appeal Advisory Committee has not been constituted at the time of the Authority's application.

Division 2 – Response to reasons and withdrawal of appeal

Response to reasons

8. — (1) The appellant must, within 28 days from the date on which the Authority sends the reasons for its decision under regulation 7(1), send a response to the Authority's reasons to the secretary, and copy the Authority.

(2) The secretary must, as soon as practicable upon receipt of the response to the Authority's reasons, forward that document to the Appeal Advisory Committee.

(3) The response to the Authority's reasons under paragraph (1) must –

- (a) contain –
- (i) a concise statement of the facts;
 - (ii) a summary of the grounds for appealing against the decision of the Authority;
 - (iii) the arguments of fact or law supporting each ground of appeal; and
 - (iv) the outcome sought by the appellant;
- (b) be accompanied by any supporting document referred to in the response to the Authority's reasons or relied on in support of the appeal; and
- (c) be signed and dated by the appellant, or on his behalf by his authorised representative or legal representative.

(4) The Appeal Advisory Committee may, on the application of the appellant within the time limit provided under paragraph (1), in its discretion extend the time limit provided under paragraph (1).

Withdrawal of appeal

9. — (1) The appellant may at any time before the Minister notifies the parties of his decision in the appeal in accordance with regulation 24(2), withdraw the appeal by sending the secretary a written notice to that effect, and copying the Authority.

(2) The secretary must, as soon as practicable upon receipt of the written notice, forward that document to the Appeal Advisory Committee.

Division 3 – Conduct of the proceedings

Conduct of the appeal

10. — (1) Subject to the provisions of the Act and these Regulations, the Appeal Advisory Committee has full discretion to conduct the appeal proceedings in such manner as it considers appropriate.

(2) All documents or other material sent to the secretary by a party must simultaneously be sent to the other party.

Consolidation

11. — (1) Where 2 or more appeal proceedings are pending in relation to the same decision of the Authority, or involve the same or similar facts or issues, the Appeal Advisory Committee may at any time, on the application of a party or of its own initiative, order that the proceedings or any particular issue raised in the proceedings be consolidated or heard together.

(2) The Appeal Advisory Committee referred to in paragraph (1) is the Appeal Advisory Committee to which an application under paragraph (1) is made or which seeks on its own initiative to consolidate or hear the proceedings or issue together.

(3) Before making an order under paragraph (1), the Appeal Advisory Committee referred to in paragraph (1):

- (a) must invite all the parties to the relevant proceedings to make their submissions and if it deems necessary, invite all the parties to appear before and be heard by the Appeal Advisory Committee in relation to the consolidation;
- (b) must ensure that all the submissions of the parties are provided to the Appeal Advisory Committee(s) of the relevant proceedings for their views; and
- (c) may take into consideration the views of the Appeal Advisory Committee(s) of the relevant proceedings, in relation to the consolidation.

(4) The Appeal Advisory Committee referred to in paragraph (1) is the Appeal Advisory Committee that will conduct the appeal proceedings for the proceedings or issues that are consolidated or heard together if an order under paragraph (1) is made.

(5) For the purpose of regulation 11, “relevant proceedings” means the other appeal proceedings that are the subject of consolidation under paragraph (1).

Case management conference

12. — (1) As soon as practicable after the appellant has sent its response to the Authority’s reasons under regulation 8(1), the Appeal Advisory Committee may hold a case management conference with the parties, whether by way of exchange of correspondence, meeting in person, video conference or otherwise, to facilitate the appeal proceedings, and in particular:

- (a) to determine the procedures and timelines that will be most appropriate and efficient for the conduct of the proceedings, including timelines for the submission of additional documents, witness statements or expert reports;
- (b) to determine the points on which the parties have to present further arguments or which call for further evidence to be produced;
- (c) to clarify the terms of the orders sought by the parties, their arguments of fact and law and the points at issue between them; or
- (d) to ensure that all agreements reached between the parties about the points at issue and the conduct of the proceedings are recorded.

(2) The Appeal Advisory Committee may, at any time, on the request of a party or of its own initiative, give directions for further case management conferences to be held.

(3) A case management conference must be held in private.

Directions

13. — (1) The Appeal Advisory Committee may at any time, whether at a case management conference or otherwise, on the request of a party in the manner described in paragraph (4) or of its own initiative, give one or more of the directions referred to in paragraph (2), or such other directions as it thinks fit.

(2) Without prejudice to the generality of paragraph (1), the Appeal Advisory Committee may give directions –

- (a) as to the manner in which the proceedings are to be conducted, including whether the proceedings are to be conducted by a hearing in person or by video conference, or by way of written submissions, or by any other means;
- (b) on any time limits to be observed in the conduct of the proceedings, and any abridgement or extension of any time limits;
- (c) that the parties file a reply, rejoinder or other additional submissions;
- (d) for the preparation and exchange of skeletal arguments;

- (e) for the filing by the appellant or the Authority of a core bundle or core bundles comprising a copy of every document on which the appellant or the Authority (as the case may be) relies, including the written statements of witnesses of fact and expert witnesses (if any);
- (f) requiring any person to attend a hearing and give evidence or to produce any document or material;
- (g) as to the evidence which may be required or admitted in proceedings before the Appeal Advisory Committee and the extent to which it must be oral or written;
- (h) as to the submission of a list of witnesses, including expert witnesses, whom the parties intend to call;
- (i) as to the submission of witness statements or expert reports;
- (j) as to the examination or cross-examination of witnesses;
- (k) for the disclosure between, or the production by, the parties of documents or classes of documents;
- (l) for the appointment and instruction of experts, whether by the Appeal Advisory Committee or by the parties, and the manner in which expert evidence is to be given; and
- (m) for hearing a person who is not a party to the proceedings and where it is proposed to make an order or give a direction in relation to that person.

(3) The Appeal Advisory Committee may, in particular, of its own initiative –

- (a) put questions to the parties, witnesses and any other persons who are not party to the proceedings but who appear before the Appeal Advisory Committee for a hearing (including a hearing in relation to an order under regulation 11(1));
- (b) invite the parties and any other persons who are not party to the proceedings but who appear before the Appeal Advisory Committee for a hearing (including a hearing in relation to an order under regulation 11(1)) to make written or oral submissions on certain aspects of the proceedings;
- (c) ask the parties, witnesses and any other persons who are not party to the proceedings but who appear before the Appeal Advisory Committee for a hearing (including a hearing in relation to an order under regulation 11(1)) for information or particulars;
- (d) ask for any document relating to the appeal to be produced; and

- (e) summon the parties or their representatives to meetings or case management conferences.
- (4) A request by a party for directions under paragraph (1) must be –
- (a) made in writing and sent by the party to the secretary, copying the other party, as soon as practicable;
 - (b) forwarded by the secretary to the Appeal Advisory Committee as soon as practicable upon receipt of the request; and
 - (c) served by the secretary, in such manner as the secretary may generally or specifically determine, on any other person who may be affected by such directions, as determined by the Appeal Advisory Committee after taking into account the submissions (if any) of the parties.

Witnesses

14. — (1) Before any hearing, the Appeal Advisory Committee may require the parties to give notice of the identity of witnesses, including expert witnesses, whom the parties intend to call, the subject matter of their testimony and its relevance to the issues.

(2) The Appeal Advisory Committee may direct the testimony of witnesses to be presented in written form, either as signed witness statements or sworn affidavits or any other form of recording.

(3) Unless the Appeal Advisory Committee otherwise directs, no expert or witness of fact must be called unless the relevant expert report or witness statement has been submitted before the hearing of an appeal and in accordance with any direction of the Appeal Advisory Committee.

(4) The Appeal Advisory Committee may allow, refuse or limit the appearance of witnesses to give oral evidence at any hearing.

(5) Where a party fails to notify the Appeal Advisory Committee of a witness in accordance with paragraph (1), that witness must not be called by that party except with the prior consent of the Appeal Advisory Committee.

(6) The Appeal Advisory Committee may, in its discretion, summon all or any of the witnesses proposed by any party, and any other witness or any other person, to give evidence before the Appeal Advisory Committee or to produce any document or material.

(7) The secretary must:

- (a) at least 7 days before the hearing of an appeal serve on any person who is summoned to appear before an Appeal Advisory Committee to give evidence or to produce any document or material, in such manner as the secretary may

generally or specifically determine, a written notice of the date, time and place at which the Appeal Advisory Committee will sit; and

- (b) as soon as practicable send the Authority and the appellant (or his authorised representative or legal representative) a copy of the notice referred to in paragraph (a) above.

(8) Any person who is summoned by an Appeal Advisory Committee under paragraph (6) and who intentionally omits to attend at the date, time and place specified in the written notice referred to in paragraph (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

(9) The Appeal Advisory Committee may dispense with the need to call a witness to give oral evidence if a witness statement prepared in accordance with the Appeal Advisory Committee's directions under paragraph (2) has been submitted in respect of that witness.

(10) The Appeal Advisory Committee may allow a witness to give evidence through a video link.

(11) Subject to paragraphs (2), (4) and (9) above, any party may request that a witness give oral evidence or to produce any document or material.

(12) A party or its representatives may interview any witness or potential witness that may be presented by that party prior to his appearance to give oral evidence at any hearing.

Conduct and timetable of proceedings

15. — (1) The Appeal Advisory Committee has the authority to establish the conduct of the proceedings as it considers appropriate, including:

- (a) the form of the proceedings, where the Appeal Advisory Committee may direct that it takes place by hearing in person or by video conference, or by way of written submissions, or by any other means;
- (b) the date, time and place (if applicable) of the proceedings;
- (c) the content of the proceedings, where the Appeal Advisory Committee may direct the parties to address a list of specific questions or issues arising from the parties' dispute;
- (d) the procedure during a hearing, where the Appeal Advisory Committee may direct the order in which the parties are to present their case, including the order in which witnesses are to be cross-examined; and
- (e) the time-limits during a hearing, where the Appeal Advisory Committee may direct parties to present their case within a prescribed amount of time.

(2) As soon as practicable, the Appeal Advisory Committee must notify the parties in writing of –

- (a) the form of the proceedings;
- (b) the date, time and place (if applicable) for the proceedings;
- (c) a timetable outlining:
 - (i) the steps to be taken by the parties in preparation for the proceedings of the appeal, whether pursuant to the directions of the Appeal Advisory Committee or otherwise, and any time-limits that the parties are to adhere to for each step; and
 - (ii) where applicable, the procedure during a hearing, and any time-limits that the parties are to adhere to during the hearing.

Evidence

16. — (1) The Appeal Advisory Committee –

- (a) has control of the evidence at the hearing of an appeal;
- (b) is not bound by the provisions of the Evidence Act (Cap. 97) or by any other law relating to evidence;
- (c) may give directions as to –
 - (i) the issues on which it requires evidence;
 - (ii) the nature of the evidence which it requires to decide those issues; and
 - (iii) the manner in which the evidence is to be placed before the Appeal Advisory Committee.

(2) Without limiting the generality of paragraph (1), the Appeal Advisory Committee may admit or exclude any evidence adduced by any party or any witness –

- (a) whether oral or documentary;
- (b) whether admissible or inadmissible under any law for the time being in force relating to the admissibility of evidence; and
- (c) whether or not the evidence was available when the contested decision was made.

(3) The Appeal Advisory Committee may, at any time before the Minister makes a decision, call such further evidence or explanation from all or any of the parties to be given, in the presence of the other party or parties, as it may consider necessary.

Division 4 – Hearing of appeals

Appeal Advisory Committee to conduct proceedings

17. — (1) The Appeal Advisory Committee must conduct a hearing for the presentation of evidence and for oral submissions on the merits of the dispute, unless it is of the view the proceedings may be conducted by way of written submissions alone.

(2) Where a hearing is conducted, the Appeal Advisory Committee must give the Authority and the appellant (or his authorised representative or legal representative) a reasonable opportunity to appear before and be heard by the Appeal Advisory Committee.

(3) Where the proceedings are conducted by way of written submissions, the Appeal Advisory Committee must give the Authority and the appellant (or his authorised representative or legal representative) a reasonable opportunity to make their submissions.

(4) The Appeal Advisory Committee must conclude the proceedings within 42 days from the date the appellant sends his response to the Authority's reasons under regulation 8(1).

(5) The Appeal Advisory Committee may, on the application of a party or if it considers that the justice of the case so requires, recommend to the Minister to extend the time limit provided under paragraph (4).

(6) The Minister may, after considering the recommendations of the Appeal Advisory Committee, extend the time limit provided under paragraph (4).

Meetings and hearings not open to public

18. Every meeting and hearing of an Appeal Advisory Committee must be held in private.

Procedure at hearing of appeals

19. — (1) Appeal hearings must be opened and directed by the chairman of the Appeal Advisory Committee.

(2) The Appeal Advisory Committee may give directions as to the party to begin and the order of speeches at the hearing and, subject to any such directions, the party to begin and the order of speeches will be that provided under this regulation 19.

(3) The appellant will begin by opening his case.

(4) The appellant will then examine his witnesses, if any, and each of them may in turn be cross-examined by the Authority, after which the appellant may re-examine them.

(5) The appellant may, after the evidence on his behalf has been given, make a second speech closing his case and the Authority will then state its case.

(6) The Authority will then examine its witnesses, if any, and each of them may in turn be cross-examined by the appellant, after which the Authority may re-examine them.

(7) The Authority may, after the evidence on its behalf has been given, make a second speech closing its case and at the close of the Authority's case the appellant may make a speech in reply.

(8) The Appeal Advisory Committee may direct that expert witnesses of the appellant and the Authority respectively, if any, be cross-examined and re-examined in any sequence as the Appeal Advisory Committee thinks fit.

(9) Any witness who gives evidence at the hearing of an appeal may be questioned by the Appeal Advisory Committee in such manner as the Appeal Advisory Committee may determine.

(10) The Appeal Advisory Committee may limit the cross-examination of witnesses to any extent or in any manner it considers appropriate.

(11) If, at the time appointed for the hearing of an appeal, any party to the proceedings does not appear, the Appeal Advisory Committee may, if it is satisfied that the party has been duly notified of the hearing, proceed with the hearing and make such order as it thinks fit.

Adjournment

20. The Appeal Advisory Committee may, in its discretion, adjourn any hearing on any ground and may fix a date for a further hearing.

PART III

GENERAL PROVISIONS

Division 1 – Confidentiality

Confidential nature of the proceedings

21. — (1) The parties, the secretary, the Appeal Advisory Committee and any other person must at all times treat all matters relating to the appeal proceedings as confidential.

(2) A person must not, unless authorised by the Minister, disclose any information or document tendered or produced under these Regulations, or any part thereof, to any person other than the Minister (or his legal representative), the secretary, a member of the Appeal Advisory Committee, the Authority or the appellant (or his authorised representative or

legal representative). Any information or document includes any material or evidence (whether oral or documentary).

(3) Paragraphs (1) and (2) does not apply to:

- (a) the disclosure of the decision of the Minister in an appeal, or any part thereof;
or
- (b) the disclosure of any information or document or any part thereof –
 - (i) by the person who tendered or produced such information or document;
or
 - (ii) which is in the public domain.

(4) Any person who contravenes paragraphs (1) and (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or to both.

Requests for confidential treatment of documents or information

22. — (1) The Authority may request that any document or information, or part of a document or information, filed in connection with any appeal proceedings before the Appeal Advisory Committee to not be disclosed to the appellant (or his authorised representative or legal representative), on the basis that the document or information, or part of the document or information, contains either or both of the following:

- (a) sensitive information, the disclosure of which would pose a risk to national security;
- (b) confidential information, the disclosure of which would be injurious to public interest.

(2) The request in paragraph (1) must–

- (a) be made in writing by the Authority and, sent to the secretary;
- (b) be forwarded by the secretary to the Appeal Advisory Committee as soon as practicable upon receipt of the request;
- (c) where the request relates to part of a document or information, state the relevant words, figures or passages for which the non-disclosure is claimed;
- (d) contain the reasons for the request, and where the request relates to part of a document or information, the reasons specific to each part thereof; and

- (e) state whether the document or information, or part of the document or information, can be summarised in sufficient detail and be disclosed to the appellant (or his authorised representative or legal representative), and if not, a statements of reasons why the document or information, or part of the document or information, cannot be summarised and disclosed to the appellant.

(3) The Authority must provide to the Appeal Advisory Committee a copy of the entire document or information referred to in paragraph (1), if so directed by the Appeal Advisory Committee, and the Appeal Advisory Committee may take into account the entire document or information in making its recommendation to the Minister in accordance with paragraph (4).

(4) The Appeal Advisory Committee must write to the Minister to state its recommendations on:

- (a) whether the disclosure of the document or information, or part of the document or information, should be withheld from the appellant on the grounds set out at paragraphs (1)(a) and (b) above; and
- (b) whether a sufficiently detailed summary of the document or information, or part of the document or information, should be provided to the appellant.

(5) The Minister must, after considering the recommendations of the Appeal Advisory Committee at paragraph (4) above, make a decision on whether the Authority should:

- (a) disclose the entire document or all of the information to the appellant (or his authorised representative or legal representative);
- (b) disclose a redacted version of the document or a part of the information to the appellant (or his authorised representative or legal representative);
- (c) disclose a sufficiently detailed summary of the document or information, or part of the document or information, to the appellant (or his authorised representative or legal representative); or
- (d) withhold disclosing the entire document, or all of the information, to the appellant (or his authorised representative or legal representative).

(6) The Minister may, in its discretion, direct that its decision at paragraph (5) above be notified to the Authority in a manner that it considers appropriate.

(7) The appellant will not be notified of the request in paragraph (1) or of the Minister's decision on the request.

Division 2 – Outcome of appeal

Report of Appeal Advisory Committee

23. — (1) The Appeal Advisory Committee must submit a report to the Minister as soon as practicable after the conclusion of the proceedings, or such period as directed by the Minister.

(2) The report under paragraph (1) must:

- (a) state the recommendations of the Appeal Advisory Committee on the issues in the appeal, and the grounds upon which the Appeal Advisory Committee relied in making any recommendation; and
- (b) be accompanied by a summary, prepared by the Authority and the appellant respectively, of the respective arguments raised in the appeal.

(3) The report and any accompanying documents must be kept confidential and a person must not disclose the report and any accompanying documents, or any part thereof, to any other person other than the Minister (or his legal representative), unless the Minister otherwise directs.

(4) Any person who contravenes paragraph (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or to both.

Decision of Minister

24. — (1) The Minister must, after considering the report of the Appeal Advisory Committee and any accompanying documents, make a decision in an appeal.

(2) The Minister may, in his discretion, direct that his decision in an appeal be notified to the parties concerned in a manner that he considers appropriate.

Division 3 – Miscellaneous

Non-compliance

25. — (1) Any non-compliance by any party with any requirement in these Regulations is treated as an irregularity and does not nullify the appeal or render the proceedings void.

(2) The Appeal Advisory Committee may give such directions as it thinks just to cure the irregularity or waive the irregularity before making its recommendation to the Minister under regulation 25(5).

(3) The Appeal Advisory Committee is entitled to take into account any irregularity in its recommendations to the Minister under regulation 25(5).

(4) The following may be corrected at any time by the chairman or the alternate chairman, as the case may be:

- (a) clerical mistakes in any document recording a direction, or any proceedings under these Regulations; or
- (b) errors arising in such a document from an accidental slip or omission.

(5) If a party fails to comply with any direction given by the Appeal Advisory Committee in accordance with these Regulations, the Appeal Advisory Committee may, if it considers that the justice of the case so requires, recommend to the Minister that such party be debarred from taking any further part in the proceedings unless permitted by the Minister.

Service of documents

26. — (1) Any document required to be sent to or served on any person for the purpose of any proceedings under these Regulations may be –

- (a) delivered personally at his appropriate address;
- (b) sent to him at his appropriate address by ordinary post; or
- (c) sent to him by facsimile or electronic mail or other similar means.

(2) Where it appears to the Appeal Advisory Committee that there is a good reason to authorise service by a method not permitted by these Regulations, the Appeal Advisory Committee may, on the request of a party or of its own initiative, make an order permitting and specifying an alternative method of service, and specifying when the document is deemed to be served.

(3) The Appeal Advisory Committee may dispense with service of a document if the interests of justice so require.

Calculation of time

27. — (1) A period expressed in days, weeks or months after or from the happening of an event or the doing of any act or thing excludes the day on which the event happens or the act or thing is done.

(2) Where the time specified by the Minister, the Appeal Advisory Committee or these Regulations for doing any act expires on a Saturday, Sunday or public holiday, the act is in time if done on the next following working day.

(3) Where the Minister or the Appeal Advisory Committee directs that an act be done within a time not exceeding 7 days, Saturdays, Sundays and public holidays must not be reckoned in the computation of time.

Additional powers of the Appeal Advisory Committee

28. In addition to the other powers specified in these Regulations, the Appeal Advisory Committee's powers include, but are not be limited to, the power to:

- (a) extend or abbreviate any time limits prescribed under these Regulations or by its directions except where such time limits are directed by the Minister under these Regulations;
- (b) conduct such enquiries as may appear to the Appeal Advisory Committee to be necessary or expedient;
- (c) direct the parties to make any property or item in their possession or control available for inspection;
- (d) subject to regulation 22, direct any party to produce to the Appeal Advisory Committee and to the other parties for inspection, and to supply copies of, any document or material in their possession or control which the Appeal Advisory Committee considers relevant to the case and material to its outcome;
- (e) place such weight on the evidence given or material tendered by any person as it thinks fit, disregard such evidence or material, exclude such evidence or material altogether or draw any inference as it thinks fit in respect of such evidence or material including the failure to give evidence or tender material;
- (f) proceed with the appeal notwithstanding the failure or refusal of any party to comply with these Regulations or with the Appeal Advisory Committee's directions or to attend any meeting or hearing, and to recommend to the Minister to impose such sanctions as the Appeal Advisory Committee deems appropriate in relation to such failure or refusal;
- (g) recommend to the Minister to decide, where appropriate, any issue not expressly or impliedly raised in the submissions of a party provided such issue has been clearly brought to the notice of the other party and that other party has been given adequate opportunity to respond; and
- (h) determine any claim of legal or other privilege.

Exclusion from section 333(1) of Act

29. Section 333(1) of the Act does not apply to any offence under regulation 14(8), 21(4) or 23(4).

Dissolution of Appeal Advisory Committee

30. An Appeal Advisory Committee constituted in respect of an appeal dissolves upon the withdrawal of that appeal or upon the Minister confirming, varying or reversing the decision of the Authority on appeal.

Revocation

31. — (1) The Securities and Futures (Appeals) Regulations 2005 are revoked.

(2) Notwithstanding paragraph (1), the Securities and Futures (Appeals) Regulations 2005 as in force immediately before [insert date] continues to apply to any appeal to the Minister made under the Act, and that is pending, on [insert date].

THE SCHEDULE
FORM 1

Regulation 6(2)

SECURITIES AND FUTURES ACT
(CHAPTER 289)

SECURITIES AND FUTURES
(APPEALS) REGULATIONS

NOTICE OF APPEAL

Date of Service of Notice on Secretary:

Name of Appellant:

NRIC No./ Passport No. / FIN No. / Company Registration No.* of the Appellant:

Address(es) of the Appellant:

Email address of the Appellant*:

Telephone Number(s) of the Appellant:

Name of Appellant's authorised representative or legal representative*:

Address of the Appellant's authorised representative or legal representative*:

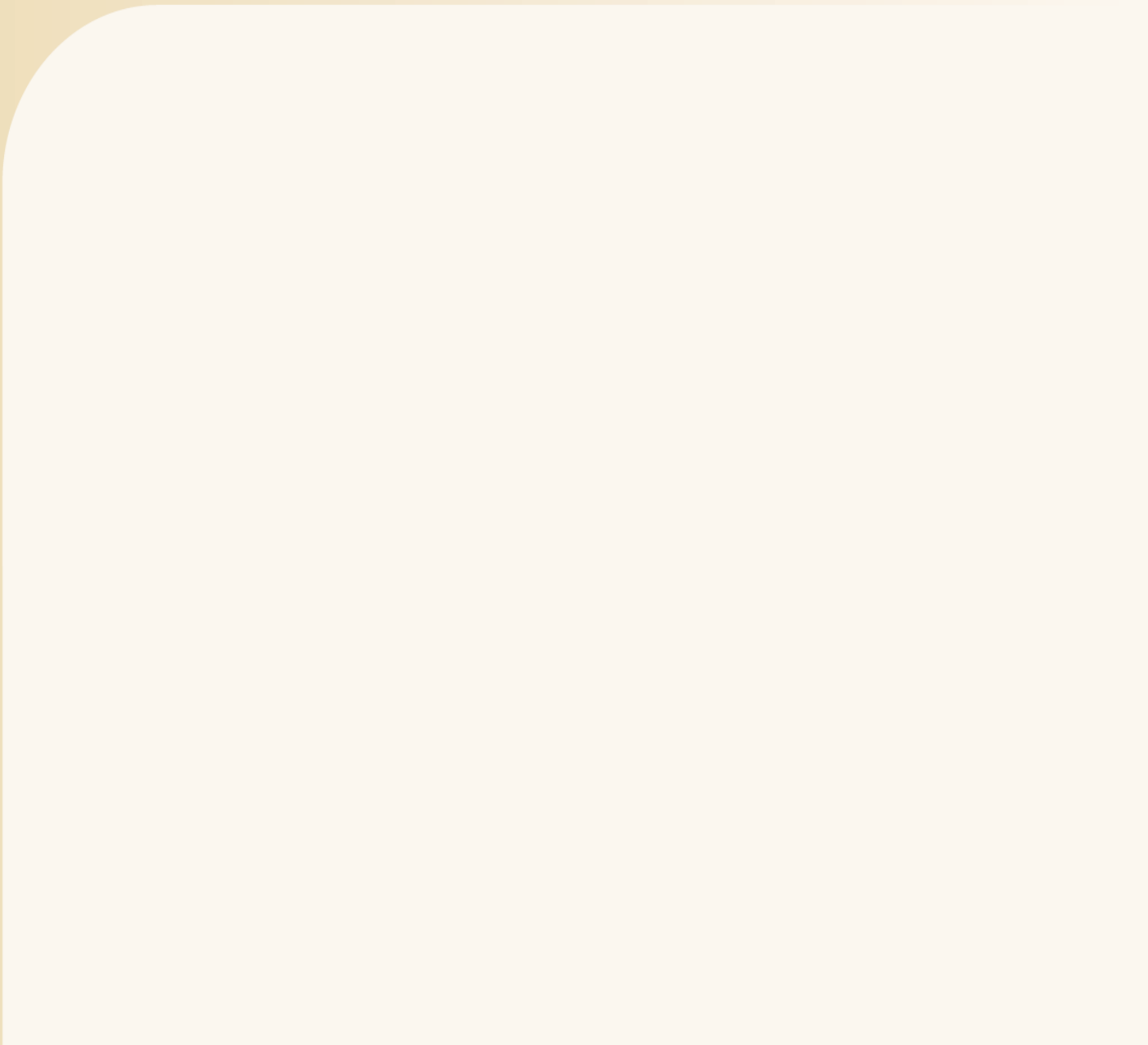
This appeal is made under section ____ of the Securities and Futures Act.

The appeal is against the Authority's decision of:

(state date and brief description of decision appealed against, whether the appeal is against the entire, or only part of the, decision of the Authority, and brief grounds for the appeal)

Signature of Appellant/
authorised or legal representative acting for
the Appellant*

*Delete if inapplicable.



Monetary Authority of Singapore