RESPONSE TO

FEEDBACK RECEIVED

September 2020

Guidelines on Individual Accountability and Conduct – Proposed Scope of Application

Monetary Authority of Singapore

Contents

1 Preface

1.1 On 6 June 2019, the Monetary Authority of Singapore (MAS) issued a consultation paper to seek feedback on:

i. The proposed additional scope of financial institutions (FIs) to apply the Guidelines on Individual Accountability and Conduct (the Guidelines) on; and

ii. The proposed headcount threshold of 20, to distinguish smaller FIs which MAS will not ordinarily expect to adopt the specific guidance under the five Outcomes.

1.2 The 6 June 2019 consultation paper is an extension of the Consultation on Proposed Guidelines on Individual Accountability and Conduct issued on 26 April 2018 and the Response to Consultation issued on 6 June 2019.

1.3 The consultation closed on 22 July 2019. MAS would like to thank all respondents for their feedback and comments.

1.4 MAS has carefully considered the feedback received, and has incorporated them in finalising the Guidelines where appropriate. The list of respondents is in Annex A, and the full submissions with the names of respondents can be found in Annex B. Comments that are of wider interest, together with MAS' responses are set out in this paper.

2 Applicability of the Guidelines

2.1 On 26 April 2018, MAS proposed to apply the Guidelines to banks, merchant banks, insurers, capital markets service licensees, finance companies, approved exchanges, approved clearing houses, approved holding companies, financial advisers and licensed trust companies. As the underlying principles of clarity in individual responsibilities and proper conduct are applicable across the financial sector, MAS proposed on 6 June 2019 to extend the Guidelines to all FIs regulated by MAS, except for exempt financial advisers[1], exempt corporate finance advisers[2], exempt trust businesses[3],

[1] Persons providing financial advisory services for up to 30 Accredited Investors (AIs) under Regulation 27(1)(d) of the Financial Advisers Regulations.

[2] Persons giving advice on corporate finance to only AIs, Expert Investors (EIs) or Institutional Investors (IIs) under Paragraph 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (SFR).

[3] Any practising solicitor, foreign practitioner, Singapore law practice, Joint Law Venture, Formal Law Alliance or Qualifying Foreign Law Practice carrying out trust business for up to 30 clients with each client's

exempt over-the-counter (OTC) derivatives brokers[4], exempt futures brokers[5], foreign-incorporated recognised market operators, foreign-incorporated recognised clearing houses, licensed foreign trade repositories and the Continuous Linked Settlement (CLS) Bank.

Requests for Exclusion from Scope – Registered Fund Management Companies and Payment Services Firms

2.2 One respondent opined that registered fund management companies (RFMCs) do not pose significant risks, which the Guidelines are targeting to address. On the other hand, another respondent said RFMCs should be expected to adopt the Guidelines as it would enable them to work towards the five accountability and conduct Outcomes.

2.3 Four respondents suggested that firms which provide payment services under the Payment Services (PS) Act (hereafter referred to as "payment services firms"), should not be expected to adopt the Guidelines, as accountability regimes in other jurisdictions do not apply to them. Conversely, two respondents said the Guidelines should apply to all payment services firms to strengthen corporate governance and accountability in Singapore's payments industry.

2.4 One respondent suggested that payment services firms, which adopt the Guidelines on Fit and Proper Criteria, should be considered to have met the standards of accountability and conduct set out in the Guidelines on Individual Accountability and Conduct. Another respondent requested for a reduced set of guidance for such firms.

2.5 Two respondents requested for a longer transition period for payment services firms to adopt the Guidelines, in view of the upcoming PS Act.

MAS' Response

2.6 RFMCs and payment services firms will be included in scope. The five Outcomes are standards of good governance that MAS expects of FIs, including RFMCs and payment services firms. Measures FIs can put in place to achieve the five Outcomes are set out in

trust assets not exceeding S$2 million under Regulation 4(1)(b)(iv) of the Trust Companies (Exemption) Regulations.

[4] Corporations carrying on business in dealing in capital markets products that are over-the-counter derivatives contracts with only AIs, EIs or IIs under Paragraph 3A(1)(d) of the Second Schedule to the SFR.

[5] Corporations carrying on business in dealing in capital markets products that are block futures contracts with only AIs, EIs, or IIs under Paragraph 3(1)(d) of the Second Schedule to the SFR.

the specific guidance, which would be more size- or risk- dependent. FIs will therefore have the operational flexibility to cater to their organisational structures and unique circumstances in establishing the appropriate governance and conduct framework to achieve the five Outcomes. In addition, FIs with a headcount of fewer than 50, will not ordinarily be expected to adopt the specific guidance described under the five Outcomes (please refer to paragraphs 3.1 and 3.9 for more information).

2.7 FIs will *not* be considered to have met the expectations in the Guidelines based solely on their adoption of the Guidelines on Fit and Proper Criteria alone. Ensuring senior managers and material risk personnel (MRPs) are fit and proper is only one of several expectations set out in the Guidelines on Individual Accountability and Conduct. For example, FIs are also expected to clearly identify senior managers and MRPs, put in place effective governance frameworks for senior managers, MRPs and all employees, and hold senior managers accountable for the actions of their staff and conduct of the business under their purview.

2.8 MAS notes the PS Act was not in force at the time of consultation. As the PS Act has taken effect on 28 January 2020, payment services firms will be granted the same 12 months transition period provided to all FIs to adopt the Guidelines.

Request for Inclusion in Scope – Entities exempt from PS Act Licensing and Variable Capital Companies

2.9 One respondent suggested that the Guidelines should be applied to entities exempt from licensing under the PS Act to level the playing field among payment firms, while another suggested that such entities should be excluded in line with their exemptions from licensing.

2.10 One respondent suggested that variable capital companies (VCCs) should be included in the scope of the Guidelines as directors of VCCs have the fiduciary duty to safeguard the interests of investors.

MAS’ Response

2.11 Entities exempt from licensing under the PS Act will not be included in the scope of the Guidelines. This is in line with MAS’ regulatory approach to exempt such parties from licensing.

2.12 MAS also does not consider it necessary to include VCCs in scope, as the day-to-day management of VCCs will be carried out by a MAS-regulated fund manager who will already be included in the scope of the Guidelines.

3 Proportionate Application

3.1 MAS proposed that all FIs in the scope of the Guidelines will be expected to achieve the five Outcomes, which are fundamental to ensuring accountability and upholding high standards of conduct within the financial industry. As accountability tends to be clearer in small FIs with simple decision-making structures, MAS further proposed that small FIs, such as those with a headcount of fewer than 20, will not ordinarily be expected to adopt the specific guidance described under the five Outcomes.

3.2 Notwithstanding paragraph 3.1, MAS may still specifically require a smaller FI (e.g. those with a headcount of fewer than 20) to adopt the specific guidance under any of the five Outcomes of the Guidelines as necessary, after taking into account factors such as the nature and complexity of the FI's operations.

Threshold of 20 Headcount

3.3 Six respondents suggested the threshold should not be based on the total headcount of the firm. Instead, the threshold should be based on the firm's annual revenue, or the number of senior managers, MRPs, representatives, investment professionals, broking staff or sales personnel within a firm.

3.4 Nine respondents requested further clarification on the definition of headcount and whether it includes senior managers and MRPs based overseas, outsourced service providers, non-executive directors or headcount in foreign offices, which support the functions of the local FI.

3.5 Five respondents requested an increase in the threshold. Some respondents suggested increasing the threshold to 50 to align with the exemptions given to small and medium-sized enterprises (SMEs) by the European Securities and Markets Authority (ESMA) and to small companies under the Companies Act[6] in Singapore. Respondents also opined that FIs approaching 20 headcount may choose to outsource key functions to avoid exceeding the threshold. They added that FIs with 20 headcount would be more

[6] The Companies Act provides an exemption for small companies from the need to perform an annual audit of its accounts. A company is considered to be a small company if it fulfils at least two out of the following three conditions: (i) the total annual revenue must not exceed S$10 million; (ii) the total assets of the company for the financial year must not exceed S$10 million; and (iii) the number of full-time employees at the end of the financial year must not exceed 50.

incentivised to outsource key functions, as such FIs would have fewer resources to apply the specific guidance under the five Outcomes compared to FIs with 50 headcount.

3.6 On the other hand, two respondents suggested removing the threshold completely. One respondent opined that small FIs would also benefit from the specific guidance under the five Outcomes. Another respondent also noted that most RFMCs would fall under the threshold of 20 headcount, and raised concerns that the threshold would neutralise MAS' expectations for FIs to be held to the same standards of accountability and proper conduct.

3.7 One respondent suggested that apart from small FIs with fewer than 20 headcount, FIs with less complex decision-making structures should also not be expected to adopt the specific guidance under the five Outcomes. Another respondent said that FIs should be able to rely on existing home state regulations to meet the five Outcomes, without needing to adopt the specific guidance. One respondent suggested medium sized FIs, such as those with between 21 and 180 headcount, and an annual net income range between USD 15 million and USD 25 million should be given the flexibility to adopt only certain aspects of the five Outcomes under the Guidelines.

MAS' Response

3.8 The purpose of the threshold is to provide a simple way for FIs to determine if the specific guidance needs to be applied. As complexity is a function of organisational structures and management's span of control, MAS is of the view that the total headcount of a FI can be used as a guide to determine the applicability of the specific guidance. Given that the personnel included in the total headcount could differ between FIs, MAS does not intend to be prescriptive on how headcount should be defined. As a general principle, headcount should include all personnel that engage in or support the FI's core management functions[7], whether on a full or part time basis. It would not ordinarily include non-executive directors, outsourced service providers or employees in foreign offices with the exception of overseas-based representatives. FIs should exercise discretion in determining the personnel to include in the total headcount based on the general principle.

[7] For an FI that is a holder of a capital markets services licence under section 82(1) of the Securities and Futures Act or a financial adviser licensed under section 6(1) of the Financial Advisers Act, the FI should include the number of local and overseas-based representatives in determining its headcount. Similarly, all exempt representatives of Registered Fund Management Companies, whether local or overseas-based, should be included in the headcount.

3.9 MAS has carefully considered the feedback received, and will increase the threshold to 50 headcount. While staff in outsourced service providers would ordinarily not be included in FIs' headcount for the purpose of this threshold, FIs continue to remain responsible for outsourced activities. In addition, MAS will follow-up with FIs which use outsourcing purely to game or circumvent the Guidelines, and may also redefine the scope of this threshold if many FIs are found to be deliberately circumventing the need to apply the specific guidance through outsourcing arrangements.

3.10 The threshold will be applied consistently across FIs. FIs are expected to achieve the five Outcomes, regardless of whether they fall above or below the threshold. FIs may apply and adapt the frameworks, policies, and procedures that have been instituted at the Regional or Head Office levels to their Singapore operations, for the purpose of meeting the specific guidance under the five Outcomes. FIs with a headcount of 50 or more are also given the flexibility not to adopt certain specific guidance in the Guidelines, if they have assessed that these are not relevant to their operations, or have alternative means to achieve the same Outcome. FIs who choose to do so should nonetheless be prepared to justify their decision. There will be no additional threshold for medium sized FIs.

Further Guidance for Small FIs

3.11 Three respondents requested for further guidance on the application of the Guidelines to small FIs.

MAS' Response

3.12 The specific guidance under the five Outcomes is intended for larger and medium-sized FIs (i.e. FIs with a headcount of 50 or more). In working towards the five Outcomes, small FIs will not ordinarily be expected to adopt any of the specific guidance, but have the flexibility to choose to adopt and adapt any as appropriate.

Transition Period and Annual Review

3.13 Three respondents suggested small FIs should be given a transition period to adopt the specific guidance under the five Outcomes of the Guidelines when they exceed the threshold. One respondent suggested small FIs should assess their need to adopt the specific guidance under the five Outcomes as of a specific date annually.

MAS' Response

3.14 FIs have the discretion to determine when and how often to assess whether they continue to fall under the threshold of a "small FI", as long as the assessments are conducted annually at the minimum. Small FIs will be given a general transition period of 12 months to adopt the specific guidance when they exceed the threshold. FIs who are approaching the size threshold should prepare to adopt the specific guidance under the Guidelines.

Others

3.15 One respondent suggested the Guidelines should not be applied to senior managers who manage outsourced functions, where these have been outsourced to an intra-group affiliate.

3.16 One respondent requested further guidance on the identification of MRPs and the higher expectations that should be applied on them.

MAS' Response

3.17 As set out in the response to consultation feedback issued on 6 June 2019, FIs are expected to identify senior managers for material outsourced functions. This is regardless of whether the functions have been outsourced to an affiliate or a third-party service provider.

3.18 The Guidelines will provide specific guidance on the identification of MRPs and the expectations on FIs for oversight of MRPs. FIs can also refer to the Frequently Asked Questions on Guidelines on Individual Accountability and Conduct for more information.

MONETARY AUTHORITY OF SINGAPORE

10 September 2020

Annex A

LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON

GUIDELINES ON INDIVIDUAL ACCOUNTABILITY AND CONDUCT – PROPOSED SCOPE OF APPLICATION

1. Alipay Merchant Services Pte. Ltd. and World First Asia Pte. Ltd., who requested for their submission to be kept confidential
2. Allen & Overy LLP, who requested for their submission to be kept confidential
3. American Express International, Inc.
4. CFA Society Singapore
5. Credit Bureau (Singapore) Pte. Ltd.
6. ICE Futures Singapore Pte. Ltd. and ICE Clear Singapore Pte. Ltd, who requested for their submission to be kept confidential
7. Ingenia Consultants Pte. Ltd.
8. Investment Management Association of Singapore
9. Life Insurance Association Singapore
10. Lloyd’s of London (Asia) Pte. Ltd.
11. PayPal Pte. Ltd., who requested for their submission to be kept confidential
12. RKH Specialty Asia Pacific Pte. Ltd.
13. St. James's Place International (Singapore Branch)
14. State Street Bank and Trust Company and State Street Trust (SG) Limited, who requested for their submission to be kept confidential
15. Telecom Equipment Pte. Ltd. and SingCash Pte. Ltd.
16. The Association of Banks in Singapore
17. The Northern Trust Company, Singapore Branch
18. Triple P Capital, who requested for their submission to be kept confidential

19. Willis Towers Watson Health & Benefits (SG) Pte. Ltd.

20. Wirecard Asia Holding Pte. Ltd.

21. Xfers Pte. Ltd.

22. Respondent 1 who requested for confidentiality of identity

23. Respondent 2 who requested for confidentiality of identity

24. Respondent 3 who requested for confidentiality of identity

Nine respondents requested for full confidentiality of identity and submission.

Please refer to Annex B for the submissions.

Monetary Authority of Singapore