Monetary Authority of Singapore

SECURITIES AND FUTURES ACT ("SFA") AND FINANCIAL ADVISERS ACT ("FAA")

FREQUENTLY ASKED QUESTIONS ("FAQs") ON THE DEFINITION OF ACCREDITED INVESTOR AND OPT-IN PROCESS

Disclaimer: The FAQs are meant to provide guidance to the industry on MAS' policy and administration of the Securities and Futures Act and regulations. They do not constitute legal advice. MAS expects industry participants to retain their independent legal counsel to advise them on how their business operations should be conducted in order to satisfy the legal and regulatory requirements, and to advise them on all applicable laws, rules and regulations of Singapore.

(I) Definition of Accredited Investor ("AI") under the SFA

Q1 When a financial institution is computing the financial assets of an individual to determine the individual's eligibility as an AI under section 4A(1)(a)(i)(B) of the SFA, can financial assets held with other financial institutions (in Singapore or otherwise) be included?

A1 Yes, financial assets held by that individual with other financial institutions(FIs) can be included if the FI who wishes to treat that individual as an AI has undertaken reasonable checks to verify the amount of such assets. FIs are ultimately responsible for ensuring that their client meets the statutory definition of an AI to rely on regulatory exemptions when dealing with the client.

[Updated on 23 Oct 2019]

Q2 What do "related liabilities" in the financial assets limb of the definition of AI refer to?

A2 As stated in paragraph 6.49 of MAS' Response to Feedback Received on Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets dated 22 September 2015 ("MAS' Response to Feedback Received"), "related liabilities" include a margin account and credit lines taken to finance an investment portfolio. FIs should collect adequate information on an investor's liabilities to ascertain which are related to their financial assets.

Q3 What does "primary residence" referred to in section 4A(1A) of the SFA mean?

A3 As stated in paragraph 6.44 of MAS' Response to Feedback Received, "primary residence" refers to the home where the investor lives in the most of the time. This can be located in Singapore or overseas.

Q4 The Securities and Futures (Classes of Investors) Regulations 2018 ("the Regulations") which effects the opt-in regime was published on 8 October 2018 and comes into effect on 8 January 2019. Under the Regulations, if the FI is able to confirm that an existing client satisfies the revised definition of AI, the FI will be able to treat the client as an AI on or after 8 January 2019 (until 8 July 2020)

so long as the client has been given the option to opt-out of being treated as an AI. Why were FIs given only 3 months for the assessment?

A4 Three months is a reasonable timeline given that only a segment of clients are affected and ample notice was provided to the industry prior to the publication of the Regulations.
Only clients who were, before the legislative changes, assessed as AIs based on the value of their primary residence are affected. AIs who did not rely on the value of their primary residence to contribute more than $1 million of the $2 million net personal assets threshold would not be affected.

Ample notice was also provided to the industry:

- MAS had published the policy positions in respect of the new AI eligibility criteria and expectations in respect of the opt-in/ opt-out procedures in 2015. As indicated then[1], MAS expect FIs to have used the time between the publication of the policy position back in 2015 and the eventual finalisation of the legislative changes to prepare the necessary documentation and upgrade their systems.
- The revised statutory definition was published in February 2017. FIs should have started collecting the necessary information in preparation for the implementation of the opt-in regime.

Nonetheless, following the publication of the Regulations on 8 October 2018, we have received further feedback and requests from FIs for additional transition time. In view that FIs have to manage multiple changes during this period (e.g. changes to other parts of the SFA, industry-wide system enhancement to post-trade securities market infrastructure), we are looking to extend the transition by a further three months. This means that FIs will have up to 7 April 2019 to provide existing clients with the option to opt out of being treated by the FI as an AI, subject to these clients meeting the revised definition of an AI. There will be no further extension after 7 April 2019. This extension of transition time is a one-off measure that MAS does not intend to take ordinarily. FIs are reminded to start preparations early when policy positions are announced.

FIs should note that for new clients, the changes to the definitions of AIs with respect to individuals under sections 4A(1)(a)(i) and 4A(1A), and with respect to other clients under regulation 2 of the Securities and Futures (Classes of Investors) Regulations 2018, will continue to take effect as of 8 October 2018 and 8 January 2019 respectively.

[1] Paragraph 6.80 of MAS' Response to Feedback Received

Accordingly, FIs that are on-boarding new clients need to ensure that the clients meet the revised definitions of AI from the above-mentioned dates.

Q5 From 8 October 2018 to 7 April 2019, are FIs expected to obtain additional independent documentary proof from all their existing individual AI clients to re-assess whether they meet the revised AI thresholds?

A5 No, FIs are not expected obtain additional independent documentary proof from all their existing individual AI clients, from 8 October 2018 to 7 April 2019, to re-assess whether they meet the revised AI thresholds. As is currently the case, FIs who serve AIs are expected to monitor if an investor continues to meet AI thresholds and to have processes in place for periodic account reviews. FIs may rely on their existing records to review whether the investors meet the revised AI thresholds. Given that the main impact would be on clients who were, before the legislative changes, assessed as AIs based on the value of their primary residence, these clients should be the focus of the FI's review. Where the FI's review indicates that any such client may not meet the revised AI threshold, the FI should then engage the client to establish the individual's AI eligibility, including obtaining the necessary independent documentary proof. Where the FI has established that a client is unable to meet the revised AI threshold, the FI must not enter into any new transaction with the client on the basis that the client is an AI.

(II) Exemption from Conduct Provisions under section 100(2) of the Financial Advisers Act ("FAA") for Specialised Units Serving High Net Worth Individuals ("HNWI")

Q6 Some specialised units serving HNWI have been granted exemptions under section 100(2) of the FAA from sections 25, 27, 28 and 36 of the Act as well as from certain written directions issued pursuant to section 58 of the Act in respect of the financial advisory service provided by the specialised unit. Can these specialised units continue to rely on this exemption?

A6 Specialised units that have been granted the exemption may continue to rely on the exemption until it is revoked, which would be after 8 January 2021.

Please note that the exemption does not allow FIs to sell new products that can only be offered to AI clients to these individuals.

Q7 Will MAS accept any new applications for exemptions relating to specialised units serving high net worth individuals?

A7 Unless there are extenuating circumstances, MAS will generally not consider new applications for exemptions relating to specialised units serving high net worth individuals. The new AI opt-in regime is meant to enhance regulatory safeguards for investors. Moreover, the extensions to the AI-eligibility criteria (including the joint account limb and the inclusion of a financial assets test) would allow a larger proportion of an FI's clients to be AI-eligible.

(III) Opt-in and Opt-out Process and Persons Prescribed as AIs under the Regulations

Q8 MAS is extending the transition time for FIs to review and transit existing AI clients to the new regime. Would the transition time for obtaining opt-in from new clients who are AI-eligible to be treated as AIs also be extended?

A8 Yes, the transition period will similarly be extended by 3 months, i.e. FIs will only need to obtain explicit opt-in as AIs from AI clients onboarded from 8 April 2019.

Q9 When onboarding new clients from now till 7 April 2019, can FIs obtain the new clients' consent to be treated as AIs as required under regulation 3(3) of the Regulations as part of the onboarding process in advance, but for the opt-in to be effective only on 8 April 2019 when regulation 3 comes into force?

A9 Yes, FIs can start incorporating the opt-in procedures in its client on-boarding process before 8 April 2019.

Q10 When onboarding new clients, can FIs obtain the new clients' consent to be treated as AIs as required under regulation 3(3) of the Regulations while concurrently confirming the AI-eligibility of the client, before further dealing with the client?

A10 Yes, the account opening forms and the "opt-in" documentation can be given to the client at the same time during the account opening process.

Q11 For existing AI clients who are individuals, the FI will have to go through the process set out in regulation 3(5) of the Regulations to provide the client with an option to opt out of being treated by the FI as an AI. What is the deadline for doing this?

A11 FIs will need to provide the option to opt-out of being an AI to existing clients before 8 April 2019.

Q12 Following from the question above, if the client is an individual who does not opt out, the FI can treat the client as an AI for the purposes of the consent provisions, but only until 8 July 2020. In order to continue treating the client as an AI after 8 July 2020, will the FI have to obtain the client's opt in to be treated as an AI by 8 July 2020?

A12 Yes. Please note that these clients must meet the revised definition of an AI, which includes a cap of $1 million for the value of the client's primary residence that can be counted towards the client's net personal assets.

Q13 Can FIs send letters to the clients setting out the statements referred to in regulations 3(4)(c) and 3(5)(c) of the Regulations before 8 April 2019?

A13 Yes, the statements referred to in regulations 3(4)(c) and 3(5)(c) of the Regulations can be provided to clients before 8 April 2019.

Q14 Do the statements referred to in regulations 3(3)(c), 3(4)(c) and 3(5)(c) of the Regulations need to be provided in hardcopy?

A14 The statements may be provided in electronic form, such as through email. In relation to the client's opt-in under regulation 3(3)(c), verbal confirmations are acceptable if these are recorded by the FIs in writing and such written records are signed by the clients. It is not necessary for clients to physically sign and return the opt-in confirmation in hardcopy. An electronic signature is acceptable. Otherwise, the client may also provide the confirmation in writing in electronic form (e.g by e-mail).

[Updated on 4 February 2019]

Q15 Do the FIs that have already reached out to their existing clients with opt-out notifications or on-boarded new clients and obtained their opt-in confirmations in advance need to reach out to these clients again to inform them that the effective date has been revised to 8 April 2019?

A15 No, FIs are not expected to reach out to these clients to inform them of the new effective date, or resend the opt-out notifications or opt-in confirmations to reflect the new effective date.

[Added on 4 February 2019]

Q16 Do the statements referred to in regulations 3(3)(c), 3(4)(c) and 3(5)(c) of the Regulations need to specifically make reference to the term "opt-in"?

A16 There is no need to use the term "opt-in" in the forms or documents provided to the client, so long as it is made clear to the client that the FI is seeking his consent to be treated as an AI.

[Added on 23 Oct 2019]

Q17 In the statements referred to in regulations 3(3)(c), 3(4)(c) and 3(5)(c) of the Regulations which are to be provided to clients, do the FIs need to include reference to all the "consent provisions" as set out in regulations 3(9), or only the "consent provisions" which are relevant to the relationship or potential dealings between the client and FI?

A17 To facilitate better understanding by clients, FIs are encouraged to provide statements that include only references to the "consent provisions" which are relevant to to the relationship or potential dealings between the client and FI.

Q18 Regulations 3(4)(e) and 3(5)(e) of the Regulations require FIs to record in writing the fact that the client has either not opted out of being treated as an AI or that the client has opted out but the timeframe for the FI to process the client's opt out request which is set out in the FI's letter to the client has not passed. Would FIs be regarded as having satisfied the requirements set out in regulation 3(4)(e) and 3(5)(e) of the Regulations if they record the fact in writing in their internal records, or are FIs required to record the fact in writing in a further correspondence with the client?

A18 Yes, it would suffice for the FIs to record this in writing in their internal records.

Q19 Regulation 3(3)(b)(iii) of the Regulations makes reference to a "period of time" to be specified in a statement to be provided to the client, which would be the relevant timeframe for the FI to process the withdrawal of a client's consent to be treated as an AI. Would it be up to the FI to decide on the "period of time"?

A19 Yes, FIs have the discretion to specify the "period of time", but this must be a reasonable timeframe to process a client's withdrawal of consent.

Q20 The term "existing client" is defined in regulation 3(9) of the the Regulations as any other person (a) with whom the firstmentioned person entered into transactions immediately before 8 January 2019; and (b) who was treated by the firstmentioned person as an AI in those transactions. Does the reference to "transactions" mean that the client has to have made actual investments in the capacity as an AI with the FI, and that these investments have to be made immediately before 8 January 2019?

A20 Given A4 above on the extension of the transition time for existing clients, the relevant date here would be 8 April 2019 instead of 8 January 2019. The answer to the question is no, the intent is to capture all existing relationships that an FI has with their AI clients before 8 April 2019 (and which are continuing). Whether there was any actual transaction made (or if it was immediately before 8 April 2019) is not the key consideration. Rather, the relevant consideration should be if the client was on boarded (before 8 April 2019) as an AI client.

Q21 Do offerors of Collective Investment Schemes or securities have to obtain an AI opt-in for every specific fund/ securities being offered, or can they rely on the opt-ins obtained by the entity that manages the client relationship, such as a private bank?

A21 An offeror can rely on the general opt-in obtained by the entity that manages the client relationship for their relationship as a whole. Accordingly, it would not be necessary for each offeror to obtain an AI opt-in for every fund or securities being offered.

Q22 Further to the question above, would offerors be able to deem the existing clients of the private banks as their existing clients, and rely on the provisions under regulation 3(4) and 3(5) of the Regulations to treat these clients as AI,

notwithstanding that the offeror may not have entered into transactions with these clients before 8 April 2019?

A22 Yes, for existing AI clients of the private bank that still meet the definition of an AI from 8 April 2019, they would be deemed AI until 8 July 2020 unless they opt-out. As such, the offeror can rely on this status and is not required to separately obtain an opt-in from these clients for such offers.

Q23 It is clarified under FAQ Q10 above that account opening forms and the "opt-in" documentation can be given to the client at the same time during the account opening process. However, in the case of a fund manager offering a fund to a prospective client, there may not be a separate account opening process. Can the fund manager provide a new potential investor with the opt-in documentation concurrently with the offer documents and the fund subscription form?

A23 Where there is no separate account opening process, the opt-in documentation can be provided together with the offer documents and the fund subscription form. MAS expects the fund manager to ensure that the investor has opted in as an AI before *accepting* subscriptions from the investor.

[Updated on 23 Oct 2019]

Q24 Where there is an existing joint account which is held by an individual who is an AI and an individual who is a non-AI, does the FI need to obtain the opt-in confirmation of the non-AI client before it can treat the client as an AI in respect of the joint account, or can the FI apply the opt-out approach to the non-AI client?

A24 With the extension in the transition period, the opt-in regime will only come into effect on 8 April 2019. If on-boarded before 8 April 2019, the joint account holder would be considered an existing client for the purposes of the opt-in regime. This means that the FI would be required to either provide each individual joint account holder the option to opt-out by 8 April 2019 or obtain an opt-in confirmation. For avoidance of doubt, the same treatment applies to joint accounts opened before 8 January 2019 and those opened between 8 January 2019 and 8 April 2019. Nonetheless, FIs may wish to obtain the opt-in confirmation of joint account holders early, so that they do not have to do so when the no opt-out transition expires after 8 July 2020.

[Updated on 4 February 2019]

Q25 How should FIs treat prior transactions of clients who were previously considered AIs but subsequently opts out of AI status? For example, will funds (including segregated mandates) that were committed by the client when he was an AI prior to his subsequent opt-out be affected? As a further example, if an existing client has opted in to AI status at the point of entering a derivatives transaction, but subsequently "opts-out" as an AI prior to the maturity of the derivatives contract, can the client be treated as an AI for that particular derivatives contract?

A25 Transactions entered into prior to an existing client opting out of AI status, will not be affected by the change in status. The FI may continue to deal with that client as if the client was an AI in respect of any contractual agreement entered into with that client prior to his or her change in status. As such, an existing client who was an AI at the point of entering a derivatives transaction can be treated as an AI for the duration of that particular transaction, even if the client opts-out prior to the maturity of the contract. Similarly, for fund investments (including segregated mandates) which were made when the client was an AI, the fund manager is not expected to redeem or liquidate the investments just because the client subsequently opts-out of being treated as an AI.

[Updated on 23 Oct 2019]

Q26 Do the safeguards on opting in as an AI under the Regulations extend to restricted schemes referred to in section 305(2) of the SFA?

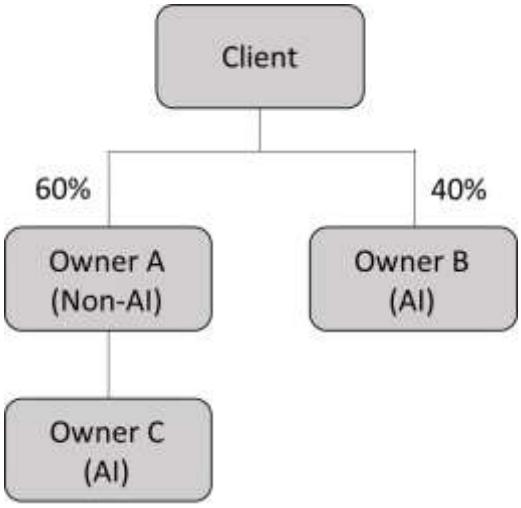
A26 Section 305(2) of the SFA continues to allow restricted schemes to be offered to any investor if the consideration for each transaction is not less than $200,000. The Regulations which introduces an opt-in/ opt-out process for AI-eligible investors, do not extend to retail investors that are offered restricted schemes under section 305(2) of the SFA.

However, please note that existing requirements, such as the need to take reasonable steps to inform the offeree that the offer is made in reliance on the exemption under section 305(2) of the SFA, and relevant conduct of business provisions under the FAA, will continue to apply.

Q27 Under regulation 2(2) of the Regulations, an AI includes "a corporation the entire share capital of which is owned by one or more persons, all of whom are accredited investors". Does the requirement for the entire share capital of the corporation to be owned by AIs apply to the immediate owners of the client, or

does it apply to the ultimate owners of the client? For example, in Figure 1 below, would the client qualify as an AI?

Figure 1



A27 The requirement for the entire share capital of the corporation to be owned by AIs may be applied at either the immediate shareholders level or at the ultimate owners level. For example, a corporate would be AI-eligible if all its immediate shareholders are AIs. If one of the immediate shareholders, which is a corporate, does not meet the $10 million net assets threshold for corporate AIs, but the ultimate shareholder of this immediate shareholder is an AI, such as the scenario presented in Figure 1, the client can still qualify as an AI. in the case of shareholders which are corporates themselves, they would be considered as AIs either because the corporate has S$10 million net assets or is itself owned by AIs.

Q28 In the case of a corporation where all the shares are held by a trustee (not a bare trustee), does the "look through" approach consider the status of the trustee or the beneficiaries in determining whether the corporation could be an AI or Institutional Investor ("II")?

A28 When dealing with a corporation, the corporation would be considered an AI if (a) as a corporation, its net assets exceed S$10 million in value (this is an existing threshold); or (b) its shareholders are all AIs (this is the "look-through" approach for AIs, expanded as part of the revision to AI changes).

The corporation may also be considered an II if it is wholly-owned by IIs (consistent with the "look-through" approach).

Where the shares of the corporation are held by a trustee on behalf of a trust, consistent with the look-through approach, the corporation may be considered:

(a) an II if the trustee is licensed under the Trust Companies Act;
(b) an AI if: (i) the property held on trust for beneficiaries of the trust exceed $10 million; or (ii) all beneficiaries of the trust are AIs; or (iii) the settlor is an AI, and the settlor has reserved powers and powers to revoke the trust.

[Updated on 4 February 2019]

Q29 A trust can be treated as AI if all the beneficiaries of the trust are AI. Can the assets in the trust count towards the assets of the beneficiaries in determining whether all the beneficiaries of the trust are AIs?

A29 For the purposes of Reg 2(1)(a) of the Regulations, in determining whether all the beneficiaries of the trust are AIs within the meaning of section 4A(1)(a)(i), (ii) or (iv) of the Act, the value of the subject matter of the trust can potentially be taken into account. The extent of which the assets in the trust can be counted towards the "net personal assets" or "financial assets" of each beneficiary of the trust is based on trust law and the terms and conditions of the trust deed. In order for the value of any asset or any share of assets held under any trust, to be counted towards the net personal assets or "financial assets" of a beneficiary, the beneficiary's interest in the asset or share of assets held under such trust must be absolutely or indefeasibly vested and immediately enjoyable. For purposes of determining whether such interest is absolutely or indefeasibly vested and immediately enjoyable, relevant considerations include whether the interest is subject to any condition, whether the interest can be taken away by any third party, and whether the beneficiary has an immediate right to the present enjoyment of the asset or share of the assets.

[Updated on 23 Oct 2019]

Q30 Does a FI that is restricted under its licence conditions to serving only AIs or IIs, have to apply the opt-in/out regime to its clients?

A30 Yes. Unless no new or additional transactions are envisaged (see FAQ Q33), any investor that the FI is serving or intends to serve as an AI should be given the choice to either opt-out (for existing investors) or opt-in (for new investors).

[Added on 4 February 2019]

Q31 Following from the question above, certain licence conditions and the definition of a "qualified investor" in the Second Schedule to the Securities and Futures (Licensing and Conduct of Business Regulations) also make reference to "investors of an equivalent class under the laws of the country or territory in which the offer is made". Does the opt-in/out regime apply to investors who fall within this category?

A31 The opt-in/out regime does not apply to investors who fall within the category of "investors of an equivalent class under the laws of the country or territory in which the offer of invitation is made". This position is set out in paragraph 6.15 of MAS' Response to Feedback Received on Proposal to Enhance Regulatory Safeguards for Investors in the Capital Markets in September 2015.

[Added on 4 February 2019]

Q32 Do fund managers restricted to serving only AIs or IIs have to apply the opt-in/out regime to underlying investors in funds where the fund manager is a sub-manager/ sub-adviser, or in feeder funds managed by the fund manager under a master-feeder fund structure?

A32 Currently, fund managers restricted to serving AIs or IIs are required to ensure that the underlying investors in their funds qualify as AI (or foreign investors of an equivalent class under the laws of the country where the offer is made) or II[2], in order to comply with the clientele restrictions imposed through licence conditions, or the definition of 'qualified investor' in the SFR. These clientele restrictions also apply in relation to underlying investors in funds where the fund manager is a sub-manager/ sub-adviser, as well as underlying investors of feeder funds managed by the fund manager under a master-feeder fund structure.

Where the fund is offered to AIs in Singapore, these AIs are required to opt-in. The obligation to obtain the opt-in from the underlying AI investors in the fund falls on the person making the offer (such as the main manager of the fund). The person making the offer can delegate the process of obtaining the opt-in to third parties, such as the sub-manager/ sub-adviser, or a distributor. The fund manager should satisfy itself that the

[2] There are, however, select circumstances under which fund managers restricted to serving AIs or IIs ("AI/II fund managers") can manage or advise funds offered to retail investors, as described in the FAQs on the Licensing and Registration of Fund Management Companies. For example, an AI/II fund manager can act as a sub-manager or sub-adviser to a fund offered to retail investors, if the main manager of the fund satisfies the definition of an AI or II, and is authorised or licensed to manage investment funds for retail investors in the jurisdiction where it operates.

third party has in place an effective framework to procure the relevant opt-in. Where the fund is being offered to foreign investors of an equivalent class under the laws of the country where the offer is made, the AI opt-in requirements will not apply.

When the fund manager manages a feeder fund in a master-feeder fund structure, the underlying investors of other feeder funds not managed by the fund manager would not be considered investors of the fund manager. Accordingly, the fund manager would not have to ensure that those other underlying investors qualify as AI (or foreign investors of an equivalent class under the laws of the country where the offer is made).

[Updated on 23 Oct 2019]

Q33 In the case of a close-end fund managed by a licensed or registered fund manager where AI investors have already contractually committed to providing capital prior to 8 April 2019, does the fund manager need to give the investors an opportunity to opt out?

A33 The fund manager can continue to treat the investor as an AI in respect of all capital that is contractually committed prior to 8 April 2019. It is not necessary to provide these investors the option to opt-out (and by extension, to opt-in), if they will not be offered any further commitments or subscriptions after 8 April 2019 into the funds or mandates managed by the fund manager.

For the commitment of new/ additional capital or contracting of a new mandate, fund managers should note the following points:

- Existing individual investors (defined as persons whom the fund manager has entered into a transaction with before 8 April 2019) who are given the choice to opt-out as AI before 8 April 2019 and who do not opt-out can be treated as AI until 8 July 2020. To treat these investors as AI after 8 July 2020, these investors will still need to opt-in (i.e. provide explicit consent to be treated as an AI), in accordance with regulation 3(3) of the Regulations. Fund managers have the flexibility to decide between a "one-step" process, where existing investors are asked to opt-in even before 8 April 2019, to avoid another round on or before 8 July 2020; or a "two-step" process, where investors are given the option to opt-out before 8 April 2019, and then provide express opt-in on or before 8 July 2020.

- Existing non-individual investors that are given the choice to opt-out as AI (in accordance with regulation 3(4) of the Regulations) before 8 April 2019 and did not opt out can be treated as AIs without any need to explicitly opt-in thereafter.
- From 8 April 2019, fund managers will be required to obtain opt-in from all new, and existing investors (whether individuals or non-individuals) that were not given the option to opt-out prior to 8 April 2019 (in accordance with regulation 3(3) of the Regs), before they can accept commitment of new/ additional capital from these investors or contract new mandates with these investors.

[Updated on 23 Oct 2019]