

CONSULTATION PAPER

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Proposed Amendments to the Exemptions from Restrictions on Deposit- Taking and Solicitation

MAS

Monetary Authority of Singapore

PREFACE

i Under section 4A of the Banking Act (Cap. 19) (“BA”), only certain entities listed in subsection (6) (“authorised entities”), such as banks, merchant banks and finance companies, may accept and solicit deposits, in the course of a deposit-taking business, in Singapore (“the deposit-taking restriction”). However, deposits taken from accredited investors (“AIs”) in specified circumstances are exempted from the deposit-taking restriction (collectively, “the Exemptions”). The Exemptions are set out in regulations 3A and 5(b) of the Banking Regulations (“the Regulations”). The concepts of an “AI” and the minimum net assets used in the Regulations are currently aligned to the Securities and Futures Act (Cap. 289) (“SFA”).

ii On 21 July 2014, the Monetary Authority of Singapore (“MAS”) issued a consultation paper on “Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets”. The paper proposes to refine the investor classes under the SFA and Financial Advisers Act (Cap 110) (“FAA”), including making changes to the definition of an “AI”. Arising from these changes, MAS proposes several consequential amendments to the Regulations to reflect appropriate changes in the concept of an “AI” for the purpose of the Exemptions under the BA.

iii This consultation paper invites comments on the proposed amendments to the Exemptions. Electronic submission is encouraged. Please submit your written comments by 12 September 2014 to:

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iv Please note that any submission received may be made public unless confidentiality is specifically requested for the whole or part of the submission.

1 INTRODUCTION

1.1 Under section 4A of the BA, only authorised entities such as banks, merchant banks and finance companies, are permitted to accept deposits, in the course of a deposit-taking business, in Singapore. This deposit-taking restriction is intended to protect depositors in Singapore.

1.2 However, deposits may be taken and solicited by unauthorised entities in specified circumstances, as set out in the Exemptions. The concept of an “AI” and the minimum asset requirement used in the Exemptions are largely aligned with that under the SFA.

1.3 Currently, under the SFA, a person is considered to be an AI if he meets the wealth threshold of more than S\$2m net assets or S\$300,000 annual income for individuals, and more than S\$10m net assets for non-individuals.¹ On 21 July 2014, MAS issued a consultation paper on “Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets” proposing several changes to the concept of an “AI” under the SFA, specifically:

- (a) an investor who meets the eligibility criteria stipulated in the “AI” definition will have the choice of electing for retail or AI status. An investor who wishes to be classified as an AI in respect of his dealing with a particular financial institution or intermediary (“FI”) will have to actively opt in to AI status (“the opt-in regime”). A two-year transitional period is proposed for FIs to migrate their existing AI clients to the opt-in regime;
- (b) to modify the net assets AI eligibility criterion of an individual, such that net equity in an individual’s primary residence² can only contribute up to S\$1m of the minimum net assets required;
- (c) to consider individuals who hold joint accounts with AIs as being AI eligible, in respect of transactions entered into using the joint accounts;

¹ For details of the current definition of an “accredited investor” under the SFA, please see Part III paragraph 2.1 of the Consultation Paper issued on 21 July 2014.

² Net equity is defined as the estimated fair market value of the primary residence less any outstanding amounts in respect of any credit facility granted to the individual or any other person that is secured by the primary residence.

- (d) to deem corporations that are wholly-owned by AIs, even if they are not investment holding corporations, to be AI eligible; and
- (e) to extend the AI eligibility criteria to all trustees of any trust in which all the beneficiaries are AIs.

1.4 This consultation paper examines the relevance of the proposed changes to the concept of an “AI” under the SFA to the Exemptions, and proposes several consequential amendments to the Regulations to reflect appropriate changes to the “AI” concept for the purpose of the Exemptions under the BA.

2 BANKING REGULATION 3A EXEMPTION

2.1 Under regulation 3A of the Regulations, a “foreign entity”³ may solicit and accept deposits in Singapore through its “agent bank”⁴ from AIs in Singapore (“the Regulation 3A Exemption”). The Regulation 3A Exemption facilitates offshore funds placements for certain private banking, custody, and payment and settlement services.

Use of the Regulation 3A Exemption today

2.2 The Regulation 3A Exemption was introduced almost a decade ago, and banks’ business practices have evolved since then. Therefore, MAS is seeking feedback on the manner and extent to which the Regulation 3A Exemption is utilised today, and whether this exemption should be retained.

Question 1

MAS seeks comments on:

- (a) how the Regulation 3A Exemption is used in relation to private banking, custody and payment and settlement services today;
- (b) whether the Regulation 3A Exemption is used in relation to any other type of business and, if so, what these businesses are; and
- (c) whether the Regulation 3A Exemption should be retained.

In addition, to support your responses to the above, please provide data on the number of AI depositors and the amount of deposits that are accepted by foreign entities through your bank as the agent bank pursuant to the Regulation 3A Exemption as at end-June 2012, end-June 2013, and end-June 2014. *(Please report all figures in SGD. For conversion to SGD from non-SGD original values, kindly apply the relevant MAS exchange rate for each reporting period.)*

³ Regulation 3A(4) defines “foreign entity” as “any corporation established or incorporated outside Singapore that is licensed, registered, approved or otherwise regulated to carry on banking business under the laws of the jurisdiction in which it is established or incorporated”.

⁴ Regulation 3A(4) defines “agent bank”, in relation to a foreign entity, to mean “a bank in Singapore or merchant bank which is a branch or subsidiary of the foreign entity”.

Scope of the Regulation 3A Exemption

2.3 Apart from seeking feedback on the relevance of the Regulation 3A Exemption, MAS also seeks views on the scope of the Regulation 3A Exemption. For example, securities firms are classified as “institutional investors” under the SFA because of their financial expertise and, like AIs, are generally offered less regulatory protection under the SFA. Presently, however, securities firms cannot place deposits with foreign entities through agent banks in Singapore as they are currently not exempted under Regulation 3A. Further, there may be requirements for deposits to be placed with another branch or subsidiary entity within the parent group of the bank or merchant bank in Singapore (“foreign-related entities”), rather than its head office or parent bank, but presently such a related branch or subsidiary entity outside Singapore cannot receive deposits via the bank or merchant bank in Singapore.

Question 2

MAS seeks comments on the scope of the Regulation 3A Exemption, for example:

- (a) whether deposits from other persons (e.g. securities firms) should be exempted; and
- (b) whether there is a need (e.g. business or operational) for deposits to be accepted by foreign-related entities that are not the head office or parent bank of a bank or merchant bank in Singapore (e.g. another subsidiary of the head office or parent bank) and, if so, whether these entities⁵ should be exempted as well.

⁵ If the entity does not carry on a deposit-taking business, whether in Singapore or elsewhere, its acceptance of the deposits will not be caught under the restriction on deposit-taking.

Definition of “AI” under the Regulation 3A Exemption

2.4 Under the Regulation 3A Exemption, an “AI” is defined in accordance with the current definition of “AI” in the SFA⁶, with slight modifications: the S\$10m net asset threshold for companies is applied on a group basis, rather than on a solo basis, and unit trusts with less than S\$10m in assets are also deemed to be AIs if they are managed by a fund manager with total funds under management in excess of S\$10m.

2.5 The definitions of “AI” under the SFA and the Regulations should generally be aligned. Therefore, MAS intends to adopt the proposed changes to the definition of an “AI” under the SFA in the Regulations, but proposes not to adopt the opt-in regime proposed under the SFA.

2.6 The proposed opt-in regime to be an AI under the SFA ensures all investors have the opportunity to avail themselves for normal regulatory protection, notwithstanding their wealth status. MAS is of the view that there is no need to introduce a similar opt-in regime under the Regulations, since clients who place funds with foreign entities, necessarily do not enjoy Singapore’s deposit protections. Opting not to be an AI under the Regulations will not give these clients any additional regulatory protection in respect of these deposits. MAS thus proposes not extending the opt-in regime to the Regulations.

Question 3

MAS seeks comments on the proposal not to extend the opt-in regime to AIs under the Regulation 3A Exemption.

2.7 Save as aforesaid, MAS intends to adopt the proposed changes to the eligibility criteria for AIs listed in paragraph 1.3(b) to (e) in the definition of an “AI” under regulation 3A. To avoid confusion with concept and definition of an AI under the SFA, we propose to relabel “AI” as “qualifying depositor” for the purpose of regulation 3A.

⁶ See paragraph 1.3.

Question 4

MAS seeks comments on:

- (a) changing the definition of an “AI” under the Regulation 3A Exemption as follow:
 - (i) to modify the net assets AI eligibility criterion for individuals, such that net equity⁷ in primary residence can only contribute up to S\$1m of the minimum net assets required to be an AI;
 - (ii) to treat individuals who hold joint accounts with AIs as AIs, in respect of transactions entered into with the FIs using the joint accounts;
 - (iii) to include corporations that are wholly-owned by AIs, even if they are not investment holding corporations, as AIs; and
 - (iv) to include trustees of trusts in which all the beneficiaries are AIs as AIs.
- (b) relabeling “AI” as “qualifying depositor” for the purpose of regulation 3A.

Draft amendments to the Regulations

2.8 MAS seeks comments on the draft amendments to be made to the definition of “AI” in the Regulations, as set out in the Annex.

Question 5

MAS seeks comments on the proposed changes to the definition of “AI” in the Regulations, as set out in the Annex.

⁷ Net equity is defined as the estimated fair market value of the primary residence less any outstanding amounts in respect of any credit facility granted to the individual or any other person that is secured by the primary residence.

3 BANKING REGULATION 5 EXEMPTION

3.1 Regulation 5 of the Regulations carves out certain types of funds placements from the scope of “deposits” caught under the deposit-taking restriction. Specifically, regulation 5(b) excludes funds placed with unauthorised entities by persons meeting the net assets AI eligibility criterion for individuals for Singapore-dollar denominated bonds or negotiable certificates of deposit (“NCDs”) with an original maturity of less than 12 months.

3.2 As stated in paragraphs 2.11 to 2.15 of the consultation paper on “Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets” issued on 21 July 2014, MAS proposes modifying the net assets test for AI eligibility criterion, such that the net equity in an individual’s primary residence can only contribute up to S\$1m of the minimum net assets required for an individual to be an AI. To ensure continued alignment between the net assets AI eligibility criterion for individuals applied under the Regulations and the SFA, MAS proposes that the net assets AI eligibility criterion for individuals under regulation 5(b) be similarly modified, such that no more than S\$1m of net equity in primary residence can be counted towards the total net personal assets of the persons purchasing the bonds or NCDs under regulation 5(b).

Question 6

MAS seeks views on:

- (a) the proposed modification of the net assets AI eligibility criterion under Regulation 5(b), so that the net equity in an individual’s primary residence can only contribute up to S\$1m of the total net personal assets of the person purchasing the bonds or NCDs; and
- (b) the proposed amendments to regulation 5(b) as set out in the Annex.

4 IMPLEMENTATION TIMELINE

4.1 The proposed amendments to the Regulations will take effect at the same time as the commencement of the new AI eligibility criteria under the SFA.

ANNEX

BANKING ACT

([CHAPTER 19](#), SECTIONS 4A,
4B, [30\(1\)\(D\)](#), [32\(5\)](#), [33\(2\)\(D\)](#), [35\(1\)](#) AND [\(2\)\(E\)](#), 47(10) AND 78(1) AND (3))
BANKING REGULATIONS [2014](#)

Definitions

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

~~“accredited investor”~~“[qualifying depositor](#)” means —

- (a) an individual, a trustee or a person within the meaning of section 4A(1)(a)(i), (iii) or (iv), respectively, of the Securities and Futures Act (Cap. 289);
- (b) a corporation with net assets or net group assets exceeding \$10 million in value (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe under section 4A(1)(a)(ii) of the Securities and Futures Act in place of the first amount, as determined by —
 - (i) the most recent audited balance-sheet of the corporation (whether on an individual or on a group basis); or
 - (ii) where the corporation is not required to prepare audited accounts regularly under the [Companies Act \(Cap. 50\)](#), a balance-sheet of the corporation (whether on an individual or on a group basis) certified by the corporation as giving a true and fair view of the state of affairs of the corporation and its group (where applicable) as of the date of the balance-sheet, which date shall be within the preceding 12 months; or
- (c) a corporation which acts as a trustee for the customers of a person carrying on the business of fund management with total assets under management exceeding \$10 million in value (or its equivalent in a foreign currency);

Exemption from section 4A(1) and (2) of Act

3A.—(1) Subject to [paragraph \(3\)](#), [section 4A\(1\) of the Act](#) shall not apply to any foreign entity in respect of any deposit accepted in Singapore, on behalf of

the foreign entity by its agent bank, from any ~~accredited investor qualifying depositor~~ in Singapore.

(2) Subject to [paragraph \(3\)](#), [section 4A\(2\) of the Act](#) shall not apply to any agent bank of a foreign entity in respect of —

- (a) any offer or invitation to make any deposit, or to enter or offer to enter into any agreement to make any deposit, with the foreign entity; or
- (b) any advertisement containing such offer or invitation, where such offer, invitation or advertisement is made or issued to ~~accredited investors qualifying depositors~~ in Singapore by the agent bank on behalf of the foreign entity.

(3) An agent bank which accepts or solicits deposits from ~~an accredited investor a qualifying depositor~~ on behalf of a foreign entity in the circumstances specified in [paragraph \(1\)](#) or [\(2\)](#) shall provide the following information to the ~~accredited investor qualifying depositor~~, in writing, when soliciting or accepting any deposit from the ~~accredited investor qualifying depositor~~:

- (a) the name of the foreign entity;
- (b) the jurisdiction where the deposit account would be opened;
- (c) the class of licence or registration, or the type of approval or other instrument of regulation, that the foreign entity holds or has obtained in the jurisdiction where the deposit account would be opened;
- (d) a statement to the effect that the class of licence or registration, or the type of approval or other instrument of regulation, permits the foreign entity to accept deposits in the jurisdiction where the deposit account would be opened; and
- (e) a statement to the effect that the deposit account would not be subject to the supervisory oversight of the Authority but that of the relevant supervisory authority in the jurisdiction where the deposit account would be opened and maintained.

(4) In this regulation, unless the context otherwise requires —

“agent bank”, in relation to a foreign entity, means a bank in Singapore or merchant bank which is a branch or subsidiary of the foreign entity;

“foreign entity” means any corporation established or incorporated outside Singapore that is licensed, registered, approved or

otherwise regulated to carry on banking business under the laws of the jurisdiction in which it is established or incorporated.

Application of section 4B(6)(e) of Act

5. Subject to [regulation 6](#), for the purposes of [section 4B\(4\) of the Act](#), “deposit” does not include —

- (a) a sum paid by or on behalf of any person in consideration for the issue to him by the recipient of —
 - (i) bonds or NCDs denominated in any foreign currency;
 - (ii) bonds or NCDs denominated in Singapore dollars with an original maturity period of not less than 12 months; or
 - (iii) bonds or NCDs denominated in Singapore dollars with an original maturity period of less than 12 months and issued with a denomination of not less than \$200,000;
- (b) a sum paid by or on behalf of any person whose total net personal assets exceeds in value the minimum amount of \$2 million (or its equivalent in foreign currency) at the time of the payment, or whose income in the preceding 12 months is not less than \$300,000 in value (or its equivalent in foreign currency) at the time of the payment, in consideration for the issue to him by the recipient of bonds or NCDs denominated in Singapore dollars with an original maturity period of less than 12 months. In determining whether a person’s total net personal assets exceeds the minimum amount, the estimated fair market value of the person’s primary residence less any outstanding amounts in respect of any credit facility granted to the person or any other person that is secured by that residence, shall not account for more than \$1 million in value (or its equivalent in foreign currency) of the minimum amount.
- (c) a sum paid by or on behalf of a company whose total net assets exceed \$10 million in value or its equivalent in foreign currency as determined by the last audited balance-sheet of the company in consideration for the issue to the company, by the recipient, of bonds or NCDs denominated in Singapore dollars with an original maturity period of less than 12 months;
- (d) a sum paid by or on behalf of an officer of the recipient, a close relative of an officer of the recipient or a close relative of the recipient (if the recipient is a natural person), in consideration for the issue to the payer by the recipient, of bonds or NCDs

denominated in Singapore dollars with an original maturity of less than 12 months;

- (e) a sum paid by or on behalf of any person in consideration of the issue to him of Singapore Government Securities; or
- (f) a sum paid by or on behalf of any person in consideration of the issue to him of bonds issued by any statutory board.



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