

**RESPONSE TO
FEEDBACK RECEIVED**

1 October 2018

**Response to Feedback
Received –
Draft Notices and
Guidelines Pursuant to
Securities and Futures
Act**

MAS

Monetary Authority of Singapore

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1 Preface

1.1 On 6 October 2017, MAS issued a consultation paper on draft Notices and Guidelines pursuant to the Securities and Futures Act (“SFA”). The draft proposals will operationalise the amendments to the SFA under the Securities and Futures (Amendment) Act 2017 (“SF(A)A”). The amendments give effect to policy proposals aimed at ensuring that the capital markets regulatory framework in Singapore keeps pace with market developments and is aligned to international standards and best practices. In particular, the amendments will:

- (a) require Capital Markets Services (“CMS”) licensees and exempt financial institutions dealing in contracts for differences (“CFDs”) to provide a risk fact sheet where CFDs are offered to retail investors;
- (b) provide guidance to CMS licensees and exempt financial institutions in preparing the risk fact sheet;
- (c) support the amendments to product definitions in the SFA and the extension of the CMS licensing regime to OTC derivatives; and
- (d) provide interpretive guidance for the statutory definition of Common Investor and its application in the insider trading provisions.

1.2 The consultation period closed on 3 November 2017, and MAS would like to thank all respondents for their contributions. The list of respondents is provided in **Annex A**.

1.3 MAS has considered carefully the feedback received, and will incorporate them where it has agreed with the feedback. Comments that are of wider interest, together with MAS’ responses, are set out below.

2 New Notice on Risk Fact Sheet for Contracts for Differences and Guidelines on MAS Notice on Risk Fact Sheet for Contracts for Differences

2.1 New Notice on risk fact sheet for CFDs

2.1.1 MAS sought comments on the proposed Notice on Risk Fact Sheet for Contracts for Differences (“CFD Notice”) and the accompanying CFD Guidelines.

2.1.2 Two respondents commented that the proposed definition of “contracts for differences” under the CFD Notice was very wide, and could potentially capture all over-the-counter (“OTC”) derivatives contracts, including OTC derivatives contracts not traded on margin or where settlement does not involve taking ownership of the underlying asset. The respondents suggested that MAS clarify the definition of “contracts for differences” to ensure that the requirements under the CFD Notice are not extended to other types of derivatives contracts beyond CFDs.

MAS’ Response

2.1.3 MAS observes that CFDs offered to retail investors are margined and settled on a cash basis. As the CFD Notice applies to CFDs offered to retail investors, MAS has fine-tuned the definition to include the specific characteristics of such CFDs¹.

¹ For instance, that they are traded on a margin basis, and they are settled without involving the physical delivery of the underlying assets.

3 Amendments to SFA 04-N13 Notice on Risk-Based Capital Adequacy Requirements for Holders of Capital Markets Services Licences

3.1 Notice on risk-based capital adequacy requirements for holders of Capital Markets Services Licences

3.1.1 MAS had consulted on consequential amendments to the Notice on Risk-Based Capital Adequacy Requirements for Holders of Capital Markets Services Licences (“RBC Notice”) to effect the changes arising from the SF(A)A, including changes to product definitions in Part I of the SFA, and changes to Part IV and the Second Schedule to the SFA to extend the capital markets services licensing regime to OTC derivatives. Respondents generally supported the consequential amendments to the RBC Notice.

MAS’ Response

3.1.2 We will proceed to implement the changes to the RBC Notice.

4 Amendments to MAS Notices 757, 1105, 109, 816, and SFA 04-N04, all relating to the Lending of Singapore Dollar to Non-Resident Financial Institutions

4.1 Scope of application of SFA 04-N04

4.1.1 SFA 04-N04 currently applies to CMS licensees that are “regulated to conduct dealing in securities”.

4.1.2 In the SF(A)A, the new definition of “securities” comprises solely of either equity instruments representing legal or beneficial ownership interests, or debt instruments, and excludes any unit in a collective investment scheme and securities-based derivatives contracts. Accordingly, MAS has proposed amendments to update the references to “securities” in MAS Notices 757, 1105, 109, 816, and SFA 04-N04 (“MAS Notice 757 and Equivalent Notices”).

4.1.3 To broadly retain the current scope of application and to achieve a consistent application of the Notice across all securities trading activities (including futures contracts on securities), MAS will apply SFA 04-N04 only to “holders of capital markets services licenses to carry on a business of dealing in capital market products that are securities, units in a collective investment scheme, or securities-based derivatives contracts”.

(a) Clarification on the scope of application of SFA 04-N04

4.1.4 Some respondents requested for MAS to specify in SFA 04-N04 that the Notice will not apply to CMS licensees that do not deal in securities-based derivatives contracts, even if their CMS licences permit the dealing in capital markets products that are exchange-traded derivatives contracts or OTC derivatives contracts.

MAS’ Response

4.1.5 As stated in paragraph 6.4 in the Consultation Paper, SFA 04-N04 will not apply to a CMS licensee (permitted to deal in exchange-traded or OTC derivatives contracts) that does not deal in securities-based derivatives contracts. MAS will clarify this in “Frequently Asked Questions on MAS Notice 757 and Equivalent Notices”.

4.2 Definition of “financial institutions”

4.2.1 Paragraph 2.1.2 of MAS Notice 757 and Equivalent Notices sets out the definition of “financial institutions”, and provides various examples of entities considered to be

carrying on businesses in financial services. In particular, paragraphs 2.1.2(f) currently lists “securities dealing” as an example of a financial service.

4.2.2 Given the new definition of “securities” under the SF(A)A, “securities dealing” could be misconstrued to be limited to dealings in only equity or debt instruments. MAS will replace “securities dealing” with “dealing in capital market products”, so as to reflect a broad reference to financial services, in line with the original intent of paragraph 2.1.2 of MAS Notice 757 and Equivalent Notices.

(a) Perceived broadening of the definition of non-resident financial institutions

4.2.3 One respondent noted that the proposed change to the definition of “financial institutions” appeared to have widened the universe of entities that would be deemed as financial institutions. The respondent also noted from the proposed amendments to the scope of application that not all CMS licensees permitted to carry on a business of dealing in capital market products will be subject to the SFA 04-N04, and hence will not be considered as “residents”. Taken together, the respondent was of the view that some CMS licence holders that are less than 50% owned by Singapore citizens could be classified as non-resident financial institutions, even though such entities might have been considered as non-financial institutions prior to the SF(A)A.

MAS’ Response

4.2.4 The proposed amendments are intended to broadly retain the current scope of application of MAS Notice 757 and Equivalent Notices. Financial institutions that are currently classified as “residents” will still be classified as such after the amendments. There is also no widening in the definition of “financial institutions” in these notices. “Financial institutions” is defined as “entities whose main business is in financial services”, and the list of financial activities under the definition of “financial institutions” is intended to be illustrative.

5 New Guidelines on the Interpretation of “Persons Who Commonly Invest” in Division 3 of Part XII of the SFA

5.1 Different Classes of Investors

5.1.1 We sought comments on the approach of making clear that the “persons who commonly invest” (hereinafter referred to as “Common Investors”) can comprise different classes of investors, though the Guidelines on the Interpretation of “Persons Who Commonly Invest” in Division 3 of Part XII of the SFA (“Common Investors Guidelines”) do not seek to prescribe the specific classes of Common Investors for any particular product.

5.1.2 One respondent acknowledged that while investment products differ in their risk level and complexity, having different classes of Common Investors for different products may create unnecessary complications. The respondent suggested that Common Investors be defined as the classes of investors who commonly invest in the simplest investment product.

5.1.3 Another respondent commented that it is not a given that all members of any given investor class are “accustomed or likely to deal in” a particular product. For example, among the accredited investors, there may be dormant accredited investors who do not follow the market.

MAS’ Response

5.1.4 While having a single definition of Common Investors based on the classes of investors who commonly invest in the simplest investment product would have the benefit of simplicity, our view is that this would defeat the intention behind the phrase “*accustomed or likely to deal in*”, which is to reflect the fact that there are different types of investors who invest in different types of products. The identification of the Common Investors directly affects the threshold for price sensitivity and the channels for disseminating such information, and thus the differentiation to ensure that liability is only assessed with reference to the corresponding classes of Common Investors for a particular product.

5.1.5 As regards the second respondent’s comment, the determinative issue is whether a class of Common Investors, collectively, is “*accustomed or would be likely to deal in*” the relevant financial product. This is notwithstanding the peculiarities of any given Common Investor class like dormant or exceptionally risk-averse investors within those classes, which would not be taken into account when identifying the Common Investors classes.

5.2 Characteristics of Common Investors

5.2.1 We sought feedback on the proposed characteristics of retail investors and also expressed our view that those characteristics could also apply to accredited investors, expert investors and institutional investors.

5.2.2 One respondent agreed that the knowledge and descriptors of Common Investors are useful to identify those investors who are capable of being relevantly influenced for the purpose of determining material price impact. However, it was noted that the characteristics of Common Investors are less relevant for determining whether information is “generally available” under section 215 of the SFA. Instead, section 215 of the SFA is meant to ensure the dissemination of price sensitive information through channels to reach all likely participants in the market. The point is not whether the investor is able to process the information, but one of equality of access.

MAS’ Response

5.2.3 We agree with the comment that the characteristics of Common Investors are less relevant for determining whether information is “generally available”, as the point is not whether the investor is able to process the information, but one of equality of access.

5.2.4 We therefore intend to make it clear in the Guidelines that the purpose of section 215(b)(i) of the SFA is to ensure that information is disseminated through channels which would, or would be likely to, reach all Common Investors of the relevant financial product. The objective is to ensure all Common Investors have equality of access to information, and is not concerned with the issue of whether all Common Investors have the ability to process the information.

5.3 Making Information Available to All Classes of Common Investors

5.3.1 We sought comments on the test that for information to be considered generally available, it must be made known to all classes of Common Investors.

5.3.2 We received questions from a number of respondents about whether research reports that are based on publicly available information and only available to select groups of persons, for example their customers, can be considered “generally available” under section 215 of the SFA.

MAS’ Response

5.3.3 Unless the research report is based on price sensitive information that is not already in the public domain, we do not consider research reports *per se* to be price

sensitive information. Insofar as such research reports only contain publicly available information, or deductions, conclusions or inferences made or drawn from such publicly available information, they would be considered “generally available” even if the research reports were only made available to a select group of persons.

Annex A

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON
DRAFT NOTICES AND GUIDELINES PURSUANT TO THE SECURITIES AND
FUTURES ACT**

1. Dr Alexander F H Loke
2. Hongkong and Shanghai Banking Corporation Limited (Singapore Branch) and HSBC Bank (Singapore) Limited*
3. IG Asia Pte Ltd*
4. Investment Management Association of Singapore
5. RHT Compliance Solutions Pte. Ltd.
6. Securities Association of Singapore*
7. Two respondents requested confidentiality of their identity and submission

**Respondents who requested confidentiality for their submitted response*

Please refer to Annex B for the submissions.

