

CONSULTATION PAPER

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Revisions to Guidelines on Fair Dealing – Board and Senior Management Responsibilities for Delivering Fair Dealing Outcomes to Customers

MAS

Monetary Authority of Singapore

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1 Preface

1.1 The Guidelines on Fair Dealing – Board and Senior Management Responsibilities for Delivering Fair Dealing Outcomes to Customers (“the Guidelines”) were first introduced in 2009 under the Financial Advisers Act, to promote fair dealing by financial institutions (“FIs”) with a deliberate focus on customer outcomes.

1.2 The Guidelines currently set out five fair dealing outcomes. They apply to the selection, marketing and distribution of investment products, provision of advice in relation to these products, and cover responsibilities for after-sales services and complaints handling.

1.3 The five fair dealing outcomes are –

Outcome 1: Customers have confidence that they deal with financial institutions where fair dealing is central to the corporate culture.

Outcome 2: Financial institutions offer products and services that are suitable for their target customer segments.

Outcome 3: Financial institutions have competent representatives who provide customers with quality advice and appropriate recommendations.

Outcome 4: Customers receive clear, relevant and timely information to make informed financial decisions.

Outcome 5: Financial institutions handle customer complaints in an independent, effective and prompt manner.

1.4 As part of its ongoing review, MAS proposes to widen the scope of application of the Guidelines to explicitly include all FIs and the corresponding products and services that they offer to their customers.

1.5 In addition, MAS proposes to incorporate key principles and guidance on the fair treatment of customers at various stages of the product life cycle or provision of service by FIs, including:

- (i) putting in place sound and objective processes to assess applications received for financial products and services (Outcome 1);
- (ii) designing and manufacturing products and services that are suitable for target customer segments (Outcome 2); and

- (iii) delivering products and services to customers as they have been led to expect, and exercising right-of-review clauses judiciously (Outcome 4).

1.6 The Guidelines with the proposed amendments are set out in the Annex. MAS invites comments from FIs and other interested parties.

Please note that all submissions received may 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 through the link below by 8 February 2023:
<https://form.gov.sg/6397e5c20846b00012fa7815>.

1.8 Should you encounter any technical difficulties in your submission, please send your enquiry or feedback to mas_mcp@mas.gov.sg.

2 Scope of the Guidelines

2.1 The Guidelines currently apply to the marketing and distribution of investment products, and the provision of financial advisory services. The fair dealing outcomes set out in the Guidelines are however relevant to all FIs, as it is fundamental that FIs demonstrate that they deal fairly with customers. The Board and Senior Management of FIs must be stewards of an organisation culture of fair dealing.

2.2 MAS therefore proposes to expand the scope of the Guidelines to explicitly apply to (i) all FIs; (ii) all financial products and services offered by them; and (iii) all their customers. MAS is cognizant that FIs offer a wide range of services which differ in the need for information, advice and recommendations. In this regard, FIs should assess how they can work to achieve fair dealing outcomes in the context of each financial product or service.

Question 1. MAS seeks comments on the proposal to expand the application of the Guidelines to all FIs, and all financial products and services offered by them to all their customers, on a proportionate basis relevant to the nature of these products and services.

3 Sound and objective process to assess applications received for financial products and services

3.1 Under Outcome 1 *“Customers have confidence that they deal with financial institutions where fair dealing is central to the corporate culture”*, MAS proposes to include guidance for FIs to adopt sound and objective practices in the assessment of applications for financial products and services. This would mean that when providing financial products and services, FIs should not accord differential treatment to any individual or groups of individuals unless there are justifications supported by relevant and reliable information or data.

3.2 An example of inappropriate differentiated treatment would be to reject a prospective customer’s application for insurance based on declaration of personal information without having done a proper substantiated risk-based assessment. Insurers should apply consistent risk assessment to all insurance applications. The assessment should be properly substantiated with reliable information or data relevant to the risks being insured. Where an application is rejected or approved with additional conditions, insurers should properly explain the basis for the underwriting decision after having made reference to the relevant information or data.

Question 2. MAS seeks comments on the proposal to include expectations on sound and objective process to assess applications for financial products and services under Outcome 1 of the Guidelines.

4 Fair treatment of customers at various stages of the product life-cycle

Designing products and services that are suitable for target customer segments

4.1 FIs are also expected to deal with their customers fairly, across various stages of the product life cycle or provision of service. Accordingly, MAS proposes to apply the Guidelines to product manufacturers, and not just distributors. MAS is of the view that the existing Outcome 2 “*Financial institutions offer products and services that are suitable for their target customer segments*” can include the design and manufacturing of products and services, and does not need to be amended. MAS will, however, include additional expectations that are applicable to product manufacturers in the Guidelines. In particular, FIs should put in place policies and procedures that support the appropriate design of products and services to meet the needs of their target customer segments, taking into consideration the potential impact on customers. FIs should also have systems and controls in place to manage the risks posed by the design of the product or service.

Question 3. MAS seeks comments on the proposal to –

- apply the Guidelines to product manufacturers; and
- include expectations on the design and manufacturing of products and services within Outcome 2 of the Guidelines.

Providing information that accurately represents the products and services offered and delivered

4.2 Customers expect FIs to deliver products and services that were represented to them prior to the sale. Following MAS thematic inspections in 2020-2021¹, three key principles were identified to strengthen FIs’ fair dealing practices:

- Transparency** – providing adequate and clear disclosures on the product/service features, fees, and terms and conditions in marketing materials, fact sheets and contracts.

¹ <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Monographs-and-Information-Papers/INFORMATION-PAPER-ON-RESIDENTIAL-MORTGAGE-PRICING-AND-DISCLOSURE-PRACTICES.pdf>.

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- (b) **Consideration of customer interests** – not engaging in practices that disadvantage individuals or groups of individuals without good justifications, and the product/service performs as explained and as customers are led to expect.
 - (c) **Accountability and product governance** – having a comprehensive approval and governance framework, with adequate management oversight of product/service pricing and sales practices to monitor compliance with regulations.

4.3 These principles are applicable to all products and services offered by FIs. MAS plans to incorporate the principles and outcome of providing customers with information that accurately represents the products and services offered and delivered, within Outcome 4.

Question 4. MAS seeks comments on the proposal to incorporate principles and include expectations on providing information that accurately represents the products and services offered and delivered, in Outcome 4 of the Guidelines.

Revising terms and conditions

4.4 Some FIs have sales contracts that include a contractual right to revise the terms and conditions of a product or service (also known as the right of review or “RoR” clause).

4.5 MAS acknowledges that while the RoR clause affords FIs flexibility in extraordinary and unforeseen circumstances, it also gives FIs wide discretion to revise terms unilaterally. This may be disadvantageous to customers and seen to be unfair. MAS had observed instances where FIs had used, or intended to use, the RoR clause to change the basis of calculating interest rates for existing customers unilaterally during times of sharp movements in market interest rates.

4.6 FIs should ensure that customers are aware of RoR clauses in their contractual agreements and what their rights may be in the event that FIs exercise the clause. FIs should refrain from exercising such RoR clauses except in extraordinary and unforeseen circumstances². Should FIs exercise the RoR clause in such circumstances, MAS expects FIs to minimally:

² For example, FIs should not exercise the clause solely in response to changes in interest rates or market conditions. This is because FIs are better placed to manage such financial risks and should not unfairly pass on costs due to unanticipated changes to their customers.

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- (a) develop and maintain a robust governance process to approve the exercise of the RoR clause. The approval process should involve escalation to a management forum that has representation from senior management independent from the relevant business line. The forum should explicitly consider fair dealing outcomes for customers, including the impact that the changes are expected to have on customers, and how the FI intends to mitigate any potential detriment that customers may experience;
 - (b) provide customers with a waiver of any lock-in mechanisms and fees to allow them to switch out of the financial products without penalties and, as far as possible, offer other alternative arrangements; and
 - (c) provide customers with sufficient advance notice before the changes take effect by disclosing these changes early and in writing. This written notice should clearly explain the FI's reasons for initiating the change, the impact that the change will have on customers and the options that customers can consider if they do not agree with the change.

4.7 MAS plans to include these expectations within Outcome 4.

Question 5. MAS seeks comments on the proposal to include expectations of disclosing RoR clauses and to exercise them judiciously, in Outcome 4 of the Guidelines.

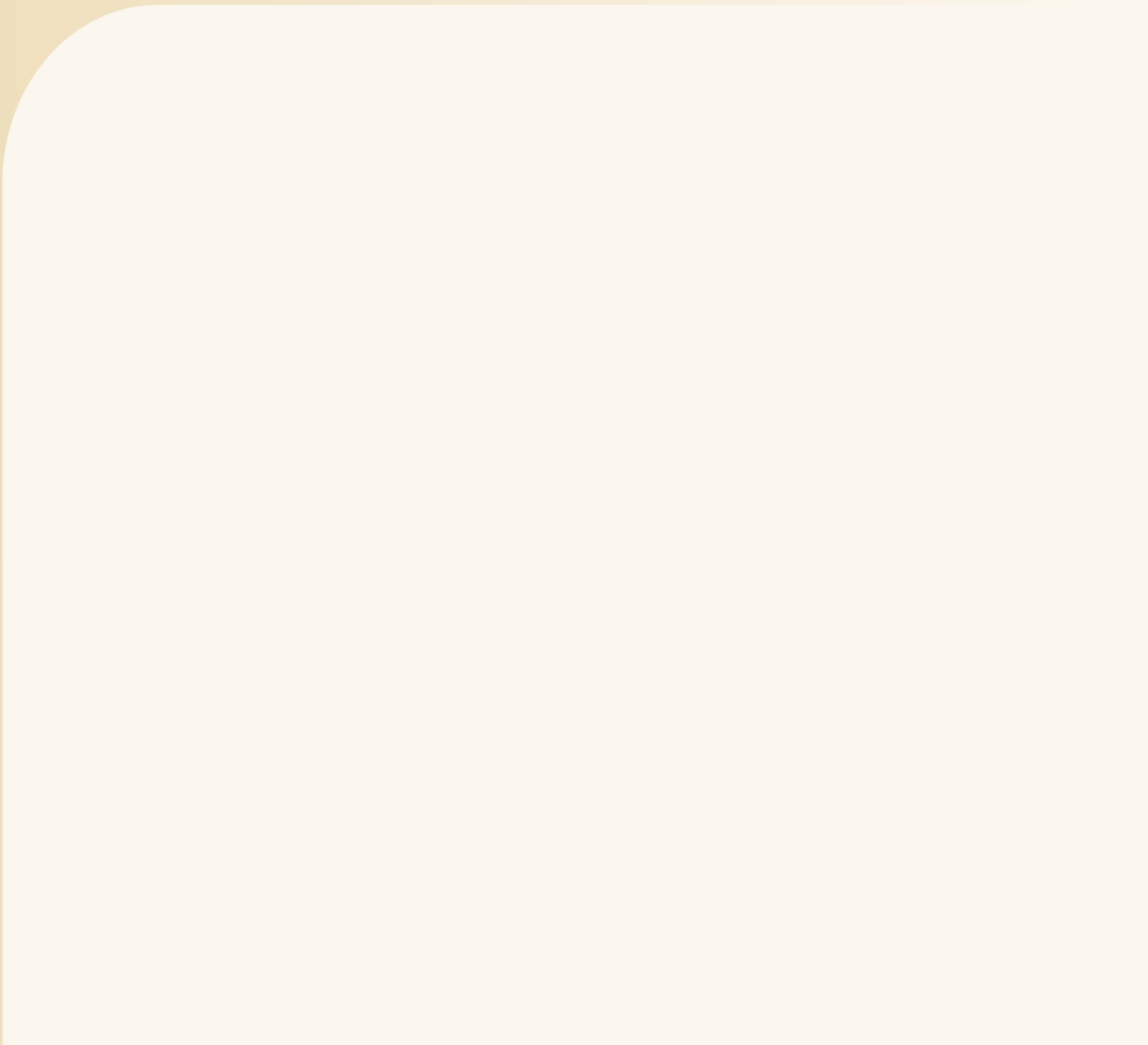
5 General

5.1 In addition to the areas highlighted above, MAS welcomes comments on other aspects of the Guidelines.

Question 6. MAS seeks comments on any aspects of the Guidelines that have not been covered in the proposed amendments.

LIST OF QUESTIONS

- Question 1.** MAS seeks comments on the proposal to expand the application of the Guidelines to all FIs, and all financial products and services offered by them to all their customers, on a proportionate basis relevant to the nature of these products and services.5
- Question 2.** MAS seeks comments on the proposal to include expectations on sound and objective process to assess applications for financial products and services under Outcome 1 of the Guidelines.6
- Question 3.** MAS seeks comments on the proposal to –6
- a. apply the Guidelines to product manufacturers; and6
- b. include expectations on the design and manufacturing of products and services within Outcome 2 of the Guidelines.6
- Question 4.** MAS seeks comments on the proposal to incorporate principles and include expectations on providing information that accurately represents the products and services offered and delivered, in Outcome 4 of the Guidelines.7
- Question 5.** MAS seeks comments on the proposal to include expectations of disclosing RoR clauses and to exercise them judiciously, in Outcome 4 of the Guidelines.8
- Question 6.** MAS seeks comments on any aspects of the Guidelines that have not been covered in the proposed amendments.8



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