

CONSULTATION PAPER

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Consultation Paper on Changes to the Notification Requirements in relation to Representatives serving only Non-Retail Customers

MAS

Monetary Authority of Singapore

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1 Preface

1.1 The Representative Notification Framework (“RNF”) was introduced in 2010 to allow Financial Institutions (“FIs”) to lodge notifications with MAS for their representatives conducting regulated activities under the Securities and Futures Act (“SFA”) and Financial Advisers Act (“FAA”). When lodging the notification with MAS, the CEO or Director of the FIs is required to certify that the representative is fit and proper¹.

1.2 MAS proposes to streamline the RNF framework and apply the notification requirements only in respect of representatives who serve retail customers. Under the proposal, FIs will not be required to submit notifications for their representatives who serve only non-retail customers as such customers are generally better able to protect their own interests. The proposed procedural change will reduce the administrative burden of FIs by reducing the number of notifications they have to lodge.

1.3 MAS continues to expect that FIs be satisfied as to the fitness and propriety of all representatives, and have systems and controls in place to ensure the proper conduct of their representatives.

1.4 MAS invites comments from FIs, representatives and other interested parties.

Please note that all submissions received will 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, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. 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.

1.5 Please submit written comments by 27 October 2017 via email to Capital_Markets@mas.gov.sg. We would appreciate that you use this [template](#) for your submission to ease our collation efforts.

¹ Under the Guidelines on Fit and Proper Criteria, the criteria for considering whether a relevant person is fit and proper include but are not limited to (a) honesty, integrity and reputation, (b) competence and capability and (c) financial soundness.

2 Introduction

2.1 Under the RNF, FIs are required to lodge notifications² with MAS when they appoint representatives³ to conduct regulated activities under the SFA and FAA. An online public register of representatives (“Register”) on the MAS website maintains relevant particulars of notified representatives, against which FIs can carry out probity checks, and customers can check against for any adverse records and confirm that they are dealing with a regulated representative.

2.2 A key feature of the RNF is that for each representative, the FI would be required to certify to MAS that it has conducted reasonable checks and is satisfied that the proposed representative has met MAS’ fit and proper criteria. The RNF therefore emphasises the duty of FIs to ensure that their representatives are fit and proper and meet the requisite standards to conduct capital markets activities.

2.3 Currently, the RNF applies to all representatives, regardless of the type of customers they serve (e.g. retail vs. non-retail customers). MAS proposes to streamline the framework by applying the notification requirements only in respect of representatives who serve retail customers. The responsibility of FIs to ensure the fitness and propriety of their representatives, and to put in place systems and controls to ensure the proper conduct of their representatives, remains unchanged.

2.4 Details of the proposal are set out in section 3.

3 Proposal not to require FIs to lodge notifications for representatives who serve only non-retail customers

² FIs are required to submit Form 3A: Notification for the Appointment of an Appointed Representative under SFA Section 99D and Regulation 3A of the Securities and Futures (licensing and Conduct of Business) Regulations (<http://www.mas.gov.sg/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Funds-Management/Forms/Securities-and-Futures-Licensing-and-Conduct-of-Business.aspx>) and FAA Section 23C and Regulation 4A of the Financial Advisers Regulations (<http://www.mas.gov.sg/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Financial-Advisers/Forms.aspx>.)

³ Other than Appointed Representatives, representatives also include Provisional Representatives (experienced individuals who are in the midst of locating to Singapore to perform SFA or FAA regulated entities) and Temporary Representatives (overseas-based representatives who wish to conduct regulated activities for a temporary or short-term basis).

3.1 Currently FIs are to notify MAS when they appoint representatives to conduct regulated activities under the SFA and FAA. Upon notification from the FI, MAS would place the record of a proposed representative on the Register unless MAS has reasons to believe that an FI has not conducted sufficient due diligence on its proposed representatives.

3.2 Considering that non-retail customers are generally better informed or better able to access resources to protect their own interests, MAS proposes that FIs not be required to lodge notifications for newly engaged representatives performing regulated activities under the SFA and FAA if these representatives only serve non-retail customers. Such representatives would be exempted from the requirement to be an Appointed Representative, Provisional Representative or Temporary Representative (collectively “Notified Representatives”) under section 99B of the SFA and section 23B of the FAA. As FIs are no longer required to lodge notifications with MAS for representatives serving only non-retail customers, particulars of such representatives would not be added to the Register.

3.3 FIs who prefer that their representatives who only serve non-retail customers be listed on the Register and be Notified Representatives can continue to lodge notifications with MAS. These representatives would need to comply with entry and ongoing requirements applicable to Notified Representatives as set out in the SFA and FAA. Existing representatives already on the Register who serve only non-retail customers would not be removed from the Register and would continue to be Notified Representatives. FIs who wish to remove the names of such representatives may request MAS to do so.

Responsibilities of FIs

3.4 Regardless of the need for notification, MAS expects FIs to be satisfied that all their representatives are fit and proper and to have in place systems and controls to ensure the proper conduct of their representatives.

3.5 In respect of representatives who serve only non-retail customers and are not notified to MAS, FIs will be required to maintain their own records⁴ of such

⁴ These would include the following details of the representative: name, the period the representative is acting on behalf of the FI and the activities the representative can conduct on behalf of the FI.

representatives; these records must be promptly made available by the FIs to MAS upon request.

Fitness and propriety of representatives

3.6 MAS continues to expect FIs to undertake appropriate due diligence to ensure the fitness and propriety of all representatives including representatives serving only non-retail customers. MAS' expectations in this regard are set out in circular CMI 01/2011 on "Due Diligence Checks and Documentation in respect of the Appointment of Appointed, Provisional and Temporary Representatives"⁵.

3.7 Under MAS Guidelines on Fit and Proper criteria, one criterion for considering whether a relevant person, such as a representative, is fit and proper is the person's competence and capability. In respect of Notified Representatives, the relevant Notices⁶ set out the detailed requirements.

3.8 As a representative who serves only non-retail customers - and whose FI decides not to lodge a notification with MAS (and is hence not included in the Register) - would not be required to be a Notified Representative, he would not be subject to the competency requirements under the relevant Notices referred to in paragraph 3.7 which apply to Notified Representatives. This would be in respect of both SFA and FAA activities and would include requirements to pass specific Capital Markets and Financial Advisory Services ("CMFAS") examinations modules. Nonetheless, the FI would still be required to satisfy itself as to the competency of such representatives. FIs would also have the discretion to subject such representatives to the CMFAS examination modules.

3.9 Under this approach, an FI would have greater flexibility in its assessment of the competency of a representative serving non-retail customers, taking into account the types of products their customers are interested in. MAS expects that FIs would ensure that their representatives serving non-retail customers are able to meet the job demands,

⁵ <http://www.mas.gov.sg/regulations-and-financial-stability/regulations-guidance-and-licensing/securities-futures-and-funds-management/circulars/2011/cmi-012011-due-diligence-checks-and-documentation.aspx>

⁶ These requirements are set out in the [Notice on Minimum Entry and Examination Requirements for Representatives of Holders of Capital Markets Services Licence and Exempt Financial Institutions](#) under the SFA and the [Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers](#).

taking into account that non-retail customers are typically more sophisticated and have access to a larger and more complex range of products.

3.10 MAS also took into consideration the feedback received on the Consultation on the Review of Competency Requirements for Representatives Conducting Regulated Activities under the Securities and Futures Act and Financial Advisers Act. MAS had received feedback suggesting that an existing exemption from CMFAS requirements for representatives appointed to conduct FAA activities and who serve only Accredited Investors be extended to representatives carrying out SFA activities.

Ensuring the proper conduct of representatives

3.11 As part of the proposal not to require notifications to be lodged for representatives who would serve only non-retail customers, these representatives would no longer be directly subject to requirements under the SFA and FAA which apply to Notified Representatives. However, FIs will continue to be subject to these requirements; they are required to put in place compliance functions and internal controls to ensure their representatives comply with all applicable laws, codes of conduct and standards of good practice⁷.

3.12 MAS continues to place importance on the proper conduct of representatives and will retain powers to issue prohibition orders against representatives, including representatives who are not Notified Representatives, from conducting regulated activities under the SFA and FAA if they engage in improper conduct.

Question 1. MAS seeks comments on the proposal to not require FIs to lodge notifications for representatives who serve only non-retail customers.

⁷ Regulation 13(b)(ii) of the Securities and Futures (Licensing and Conduct of Business) Regulations and Regulation 14(b)(ii) of the Financial Advisers Regulations.

4 Scope of non-retail customers

4.1 For the purposes of this consultation, non-retail customers refer to Accredited Investors and Institutional Investors. MAS notes that FIs are also exempted from most requirements in respect of their dealings with Expert Investors⁸.

4.2 MAS had previously proposed an Opt-in Regime for Accredited Investors under which an investor who meets relevant criteria would have the choice of being treated as a retail or Accredited Investor⁹ and is finalising the relevant regulations to effect this regime. MAS intends that the proposal not to require FIs to lodge notifications for representatives who serve only non-retail customers to commence after the Opt-in Regime for Accredited Investors is in effect.

4.3 The main category of persons who qualify as Expert Investors are individuals who work for FIs as traders, in respect of their personal trading activities. However, some of them may also meet the applicable Accredited Investor eligibility criteria and hence would be able to opt in to be treated as an Accredited Investor. In consideration of the above, MAS seeks comments on whether to consider Expert Investors as retail or non-retail customers for the purposes of the proposed changes to the RNF framework.

Question 2. MAS seeks comments on whether to consider Expert Investors as retail or non-retail customers for the purposes of the proposed changes to the RNF framework.

⁸ “Expert investor” means (i) a person whose business involves the acquisition and disposal, or the holding, of capital markets products, whether as principal or agent; (ii) the trustee of such trust as MAS may prescribe, when acting in that capacity; or (iii) such other person as MAS may prescribe.

⁹ Consultation Paper on Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets published in July 2014 and Response to Feedback Received – Amendments to the SFA and Related Regulations to Implement Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets published in November 2016. Both documents are available at <http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2014/Consultation-on-Proposals-to-Enhance-Regulatory-Safeguards-for-Investors-in-the-Capital-Markets.aspx>.

Annex A

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