RESPONSE TO FEEDBACK RECEIVED – CONSULTATION ON THE TRANSFER OF REGULATORY OVERSIGHT OF COMMODITY DERIVATIVES FROM IE SINGAPORE TO MAS

1 Introduction

1.1 On 13 February 2012, MAS and International Enterprise ("IE") Singapore issued a joint Consultation Paper inviting comments on proposals relating to the Transfer of Regulatory Oversight of Commodity Derivatives from IE Singapore to MAS. The consultation closed on 9 April 2012.

1.2 MAS and IE Singapore have carefully reviewed the feedback received. The transfer would be effected as part of proposed amendments to the Securities and Futures Act ("SFA") which is currently being consulted on ("Consultation Paper on Proposed Amendments to the Securities and Futures Act"). MAS and IE Singapore's responses to the feedback received from the February 2012 consultation are highlighted below.

1.3 The Annex lists the respondents who gave feedback on the consultation. We thank all respondents for their comments.

2 COMMENTS ON CONSULTATION PAPER SECTION 3: PROPOSED SCOPE FOR THE TRANSFER

A Scope of Regulation under the SFA

2.1 MAS and IE Singapore proposed to transfer the regulation of commodity derivatives from the Commodity Trading Act ("CTA") to the SFA to align the regulatory approach across all classes of derivative contracts. MAS further sought views on the proposal to preserve the scope of commodity derivatives that will come within regulation of the SFA, i.e. regulate only derivatives contracts in respect of tangible commodities while retaining the power to bring intangible commodity derivatives contracts into the ambit of the SFA by way of prescription if necessary.

2.2 Most respondents agreed with the transfer of regulatory oversight of commodity derivatives from the CTA and the exclusion of intangible commodities in the proposed scope. Respondents also agreed with the exclusion of physically settled commodity forward contracts. Some respondents sought clarification on the nature and scope of the exclusion and questioned whether physically settled commodity forward contracts should be excluded when structured in a more complex manner (e.g. with embedded derivatives/optionality).

MAS' response

2.3 MAS will proceed with the proposal to transfer the regulation of commodity derivatives to the SFA. In doing so, we will preserve the status quo of regulating only tangible commodity derivatives. We will also exclude physically settled commodity forward contracts (including certain contracts with some form of optionality or embedded derivative) where the contracts are carried out for commercial purposes. The exclusion would be implemented via regulations and the drafting will be consulted upon in due course.

B Regulation of Commodity Trading

2.4 Respondents are generally supportive of transferring the regulation of commodity derivatives from the CTA administered by IE Singapore, to the SFA administered by MAS. Respondents were also supportive of maintaining the policy objective of the CTA to protect the public against bucket shops while not placing curbs on legitimate spot commodity broking, although some commented that it would provide more clarity if the regulation of spot commodity trading could also be transferred to the SFA.

<u>MAS' and IE's response</u>

2.5 The proposed transfer of commodity derivatives from the CTA to the SFA is aimed at consolidating the regulation of all derivatives under a single piece of legislation to provide the industry with greater clarity and efficiency in operating under one regulatory framework. In line with the G20 and Financial Stability Board ("FSB") commitment to strengthen the regulation of OTC derivatives trading, MAS and IE Singapore will be bringing commodity derivatives into the regulatory ambit of the SFA. As spot commodity trading is distinct from commodity derivatives, it would not be appropriate to subject the activity to the SFA regulatory regime, which is targeted primarily at financial markets and instruments. Thus, the regulation of spot commodity trading will remain under the CTA and the policy objective of the CTA to protect the public against bucket shops in spot commodity trading, while not placing curbs on legitimate spot commodity broking, will be maintained. IE Singapore and MAS will continue to monitor market developments and review the regulatory regime where necessary.

Licensing Exemptions for Spot Commodity Trading

2.6 Some respondents suggested that the licensing exemptions under the CTA be expanded. The suggestions include extending the exemptions currently available for commodity brokers to spot commodity brokers, and to exempt MAS' capital markets services ("CMS") licensees from the CTA's licensing regime.

<u>IE Singapore's response</u>

2.7 With effect from 4 June 2013, a new exemption has been gazetted in the CTA Exemption Schedule (paragraph 1(f)). A spot commodity trading intermediary that is not a party to the contract, that does not carry customers' position, margin or account in its own books, and that does not accept funds from customers, will be exempted from requiring a licence under the CTA.

2.8 In addition, arising from the transfer of regulatory oversight of commodity derivatives, IE Singapore proposes to include a new exemption in the CTA. This new exemption would carve out banks, merchant banks, and CMS licence holders, which are already regulated by MAS, from the spot commodity trading licensing regime. This proposed amendment aims to ensure that there is no overlap in the various Acts i.e. a person would not be dually licensed by IE Singapore and MAS in respect of the same transactions or business.

2.9 Finally, the commodity broker and spot commodity broker are differentiated regimes under the CTA, each having their own definitions and exemptions. We think that with these two changes, the exemption scope for spot commodity trading should be sufficient. We do not see the need to further expand the exemptions for the time being, but we will subject this to review as appropriate.

C Regulation of Markets and Clearing Facilities

2.10 MAS and IE Singapore proposed to transfer the regulation of clearing houses for commodity derivative contracts to the SFA, and to align the definition of a clearing house for such contracts with that of a clearing facility under the SFA.

2.11 Respondents were generally supportive of transferring the regulation of commodity derivatives market operators and clearing facilities to the SFA. However, it was highlighted that factors that are unique to derivatives markets (in comparison with other markets such as the securities market) as well as the regulatory regime for clearing facilities in other major jurisdictions should be taken into account when regulating them.

<u>MAS’ response</u>

2.12 MAS agrees with the comments. Please see MAS’ response issued on 23 May 2012 to comments received from the February 2012 consultation on “Proposed Regulation of OTC Derivatives”.

D Regulation of Intermediaries

2.13 MAS and IE Singapore proposed to transfer the regulation of intermediaries dealing in commodity derivative contracts to the SFA, and require these intermediaries to hold a CMS licence under the SFA. MAS' proposed approach to the licensing of intermediaries dealing in derivative contracts, including commodity derivative contracts, was set out in the consultation on "Proposed Regulation of OTC Derivatives".

2.14 Respondents were generally supportive of the proposed transfer. Several respondents sought clarifications on the transitional arrangements, including the treatment of existing holders of a commodity broker's licence under the CTA. There were requests for MAS to retain the existing licensing exemptions available under the CTA because commodities trading firms typically trade on their own account and do not deal with retail investors. There were also requests for MAS to grant a reasonable transitional period to persons affected by the transfer.

<u>MAS' response</u>

2.15 MAS will proceed with the proposal to transfer the regulation of intermediaries dealing in commodity derivative contracts to the SFA. It is unclear if commodities firms should be exempt from regulation on the basis that they trade on their own account and do not deal with retail investors. However, given that OTC commodities derivatives currently make up a small fraction of the OTC derivatives market in Singapore, and that regulatory practices for the regulation of OTC commodity derivatives intermediaries vary internationally, MAS is proposing, in consultation with IE Singapore, to migrate the relevant licensing exemptions available under the CTA to the SFA. MAS will continue to monitor market and international developments, and may make further changes to the regulatory regime for OTC commodities derivative intermediaries where appropriate. MAS will consult on any such changes accordingly.

2.16 Please refer to the consultation on "Proposed Amendments to the Securities and Futures Act" issued on 11 February 2015 for details on the proposed licensing exemptions for dealing in derivative contracts (including commodity derivative contracts) under the SFA. Please also see Part 3 of MAS' response to comments received from the consultation on "Proposed Regulation of OTC Derivatives", issued on 11 February 2015. The proposed transitional arrangements, including the treatment of existing holders of a commodity broker's licence granted under the CTA, will be separately consulted on at a later date.

MONETARY AUTHORITY OF SINGAPORE
11 February 2015

ANNEX

LIST OF RESPONDENTS TO THE CONSULTATION ON THE TRANSFER OF REGULATORY OVERSIGHT OF COMMODITY DERIVATIVES FROM IE SINGAPORE TO MAS

1. Ernst & Young LLP
2. Tradition Singapore Pte Ltd and TFS Energy (S) Pte Ltd
3. Singapore Money Brokers Association
4. IG Asia Pte Ltd
5. International Swaps and Derivatives Association, Inc.
6. Phillip Futures Pte Ltd
7. Straits (S) Pte Ltd
8. Bank of America Merrill Lynch
9. DBS Vickers Securities (Singapore) Pte Ltd
10. Citibank Singapore Ltd
11. WongPartnership LLP
12. Singapore Mercantile Exchange

*This list includes only the names of respondents who did not request that their submissions be kept confidential.