Monetary Authority of Singapore

RESPONSE TO FEEDBACK RECEIVED – PUBLIC CONSULTATION ON (1) DRAFT LEGISLATION AND PROPOSED LEGISLATIVE AMENDMENTS TO EFFECT THE POLICY PROPOSALS UNDER THE FINANCIAL ADVISORY INDUSTRY REVIEW (FAIR); AND (2) PROPOSED LEGISLATIVE AMENDMENTS TO AUTHORISE INSPECTIONS BY FOREIGN REGULATORY AUTHORITIES UNDER THE FINANCIAL ADVISERS ACT (FAA)

1 Introduction

1.1 On 2 October 2014, the Monetary Authority of Singapore (MAS or the Authority) issued a consultation paper inviting comments on the legislative provisions and amendments to effect the policy proposals under FAIR, and the proposed legislative amendments to authorise inspections by foreign regulatory authorities. The consultation closed on 4 November 2014. The list of respondents can be found at Appendix A.

1.2 MAS thanks all respondents for their feedback and contributions. MAS has carefully considered the feedback received, and where appropriate incorporated them into the respective proposed Amendment Bills, Regulations, Notices and Guidelines. Comments that are of wider interest, together with MAS' responses, are set out below.

(I) Draft Legislation and Proposed Legislative Amendments to Effect the Policy Proposals under FAIR

2 Raising the Competence of Financial Advisory (FA) Representatives – Continuing Professional Development (CPD)

2.1 Courses that Require Accreditation

2.1.1 Some respondents requested that in-house courses which have not been accredited by the Institute of Banking and Finance (IBF) or the

Singapore College of Insurance (SCI) be eligible to be counted towards the CPD requirements.

MAS' Response

2.1.2 We would like to clarify that only courses on Ethics and Rules and Regulations are required to be accredited by IBF or SCI before they can count towards the CPD requirements of four hours of training in Ethics and eight hours of training in Rules and Regulations. FA representatives may fulfill the remaining CPD hours by attending structured training courses which are not accredited by IBF or SCI. These may include courses conducted in-house or by external providers.

2.2 Scope of Applicability of the CPD requirements

2.2.1 Most respondents sought clarification on the applicability of the CPD requirements on the following groups of FA representatives:

(a) FA representatives who have recently passed the Capital Markets and Financial Advisory Services (CMFAS) examination modules;

(b) FA representatives who provide FA services to accredited investors (AIs) or institutional investors (IIs); and

(c) FA representatives of fund managers who offer retail funds.

MAS' Response

2.2.2 FA representatives who have passed the applicable CMFAS examination modules for the purpose of providing the relevant FA services will be exempted from the CPD requirements for the calendar year in which they pass the modules. In this respect, FA representatives who are new to the industry will be exempted from the CPD requirements for the calendar year in which they are first appointed. This is because to be appointed as FA representatives, they would have taken and passed the applicable CMFAS examination modules.

2.2.3 In addition, FA representatives who provide FA services to only AIs or IIs will be exempted from the CPD requirements.

2.2.4 Fund managers typically appoint distributors to distribute their retail funds and do not provide FA services to the end retail clients. To the extent

that the FA representative of a fund manager markets its collective investment schemes (CIS) to distributors who are AIs or IIs, and these representatives do not provide FA services to the end retail clients of these schemes, the CPD requirements will not apply.

2.3 Requirement for FA Firms to Ensure Appointed Representatives Comply with Certain Requirements

2.3.1 Several respondents provided feedback that the requirement under paragraph 32, read together with paragraph 30A of the revised Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers (FAA-N13), for the FA firm to ensure that each of its appointed representative obtains and retains relevant supporting evidence of having completed his CPD training, is onerous.

MAS' Response

2.3.2 We have considered the feedback and agree that it is operationally difficult for the FA firm to ensure that its appointed representatives maintain relevant supporting evidence of having completed their CPD training requirements. Under the revised FAA-N13, the FA firm and its appointed representatives are already required to maintain the relevant supporting documentation. Hence it is not necessary for the FA firm to further ensure that its appointed representatives maintain the same. In view of the feedback, we have also reviewed paragraph 32, read together with paragraph 31E of the revised FAA-N13. Based on similar considerations, we will not be requiring FA firms to ensure that their appointed representatives calculate the number of CPD training hours they have completed at the end of each calendar year.

2.4 Transition Arrangements

2.4.1 Taking into consideration the feedback from the consultation, we will provide sufficient time for the FA industry to comply with the new CPD requirements. To ensure that there is an adequate selection of accredited courses available for the industry, we will promulgate the revised FAA-N13 on 1 July 2015, and only require the CPD requirements to take effect on 1 January 2016. IBF and SCI will commence the accreditation of courses on 1 July 2015. Financial institutions and training providers who wish to submit

applications for accreditation of their courses can visit the IBF/SCI websites for more information.

2.4.2 Notwithstanding that the CPD requirements will take effect only on 1 January 2016, courses that have been accredited by IBF/SCI and completed by FA representatives between the date of issuance of the revised FAA-N13 and 31 December 2015, can be counted towards the CPD requirements of four hours of training in Ethics and eight hours of training in Rules and Regulations for the calendar year of 2016.

3 Raising the Quality of FA Firms − Financial and Other Requirements

3.1 Competency Requirements

3.1.1 To ensure that licensed financial advisers (LFAs) are properly managed and adequately staffed to better safeguard the interests of customers, MAS proposed that the Chief Executive Officers (CEOs) of LFAs have a minimum of 10 years of relevant working experience, of which at least five years must be at a managerial level. In addition, LFAs are required to employ a minimum of three full-time resident professionals with at least five years of relevant experience each.

3.1.2 One respondent sought clarification on whether the CEO of an LFA is required to have relevant working experience in every type of FA service which the LFA is licensed to provide, or if there could be flexibility in this regard. Another respondent commented that the proposed requirement for LFAs to have a minimum of three resident professionals could cause unnecessary disruption for existing LFAs as significant time would have to be spent in appointing appropriate persons. As such, the respondent requested MAS to grant an exemption for existing LFAs to comply with this requirement.

MAS' Response

3.1.3 The requirement for CEOs to have relevant working experience is an existing one, although the minimum number of years of such experience has been increased from five to 10 years for new CEO appointments as the roles and responsibilities of CEOs are now more demanding. In this regard, we

would like to clarify that CEOs need not have experience in every type of FA service which the LFA is licensed to conduct. MAS will assess the relevance of the proposed CEO's experience against the nature of the duties he has to perform in relation to the LFA's business.

3.1.4 As mentioned in the MAS' Consultation on Recommendations of FAIR issued on 5 March 2013, the revised requirement for LFAs to have a minimum of three full-time resident professionals is to ensure that LFAs are adequately resourced and operated by professionals who possess relevant expertise and experience. We note that almost all existing LFAs are currently able to meet this revised requirement. As such, we are of the view that it is not necessary to grandfather existing LFAs in respect of this requirement.

3.1.5 Notwithstanding the above, MAS will be providing a transitional period of six months from the date of publication of the revised Guidelines on Criteria for the Grant of a Financial Adviser's Licence (FAA-G01) for existing LFAs to comply with the revised requirement. This will provide sufficient time for existing LFAs to meet the revised requirement.

3.2 Compliance Arrangements

3.2.1 MAS proposed for LFAs to have effective compliance arrangements. One respondent requested that MAS clarifies the acceptable forms of compliance arrangements that LFAs can put in place.

MAS' Response

3.2.2 MAS will clarify in the revised FAA-G01 that alternative forms of compliance arrangements, such as the reliance on head office support and use of outsourced compliance services providers, are acceptable.

4 Raising the Quality of FA Firms − Non-FA Activities Conducted by LFAs

4.1 Application of Section 55A of the draft Financial Advisers Amendment Bill 2015 (FAA Bill)

4.1.1 Three respondents sought clarification on whether the new section 55A of the draft FAA Bill would be applicable to both LFAs and exempt financial advisers (EFAs), such as banks and insurers.

MAS' Response

4.1.2 Section 55A of the draft FAA Bill applies only to LFAs. As mentioned in the MAS' Consultation on Recommendations of FAIR issued on 5 March 2013, the objective of this initiative is to raise the quality of LFAs and ensure that LFAs remain professional and dedicated to their role as financial advisers. EFAs such as banks and insurers are not subject to Section 55A of the draft FAA Bill as they provide a range of financial services other than FA services, which are appropriately licensed and regulated by MAS.

4.2 Referrals made by LFAs in relation to non-FA activities

4.2.1 Regulation 38A of the draft Financial Advisers (Amendment No. 2) Regulations 2015 (FA (Amendment 2) Regs) defines "specified activity" to mean any activity which is not the provision of FA services. A few respondents requested that MAS provide examples of activities which fall within the definition of "specified activity".

4.2.2 A few respondents requested clarification on the reason for allowing LFAs, when conducting referral activities, to provide factual information on the product or service being referred. On the other hand, FA firms conducting introducing activities in relation to any FA services are prohibited from providing product information to clients.

4.2.3 One respondent enquired whether LFAs are allowed to carry out referral activities in respect of specified activities for merchant banks.

MAS' Response

4.2.4 "Specified activity" includes any activity which is not specified in the Second Schedule of the FAA, such as credit card services provided by licensed banks or will writing services provided by law firms.

4.2.5 As explained in the MAS' Consultation on Recommendations of FAIR issued on 5 March 2013, we are prohibiting the provision of product information to clients in the course of introducing activities conducted by FA firms, as this can lead to confusion as to whether the client is dealing with the FA firm as an introducer or a financial adviser under the FAA, given that such information is also provided by FA firms under the advisory process. On the other hand, as specified activities do not relate to FA services, it is unlikely that the same confusion will arise when an LFA is performing referrals of specified activities, since the product information provided would not relate to investments commonly associated with the FA process.

4.2.6 LFAs will be allowed to carry out referral activities in respect of specified activities for merchant banks. MAS will amend regulation 38B(1)(a) of the draft FA (Amendment 2) Regs to include merchant banks as a person for whom LFAs may conduct referral activities.

5 Making Financial Advising a Dedicated Service − Non-FA Activities conducted by FA Representatives of LFAs

5.1 Application of Section 55B of the draft FAA Bill

5.1.1 One respondent sought clarification on whether FA representatives of EFAs such as banks and insurers are prohibited from carrying out activities other than those specified under section 55B of the draft FAA Bill. Another respondent sought clarification on whether the prohibition would apply to all FA representatives, regardless of the segment of clients they serve.

MAS' Response

5.1.2 Section 55B of the draft FAA Bill will apply to appointed and provisional representatives of EFAs which are exempt under section 23(1)(a) to (e) from holding a financial adviser's licence. The requirements will apply regardless of the segment of clients they serve. This is consistent with our

objective that FA representatives maintain a high level of professionalism and competence in conducting business with clients.

5.2 Scope of Prohibited Activities for FA representatives

5.2.1 Several respondents sought clarification on the scope to prohibit FA representatives from "marketing any product which is not an investment product" as set out in regulation 38C(1)(d)(iv) of the draft FA (Amendment 2) Regs. The respondents expressed concerns that the definition appears to be too wide and could be misconstrued to include non-FA activities that FA firms are permitted to conduct in the first instance. For example, an FA representative of a bank may be prohibited from marketing products (e.g. commodity derivatives) which the bank is allowed to deal in as part of the bank's business model but which is not regulated under the FAA.

5.2.2 One respondent also queried if the restrictions would extend to FA representatives' business interests outside their FA activities, whether in their capacity as shareholders, directors, employees or agents. Another respondent suggested that the prohibition for FA representatives to conduct non-FA activities could be more clearly scoped to prohibit any active income-earning non-FA activities, but permit FA representatives to engage in passive income generating activities (e.g. rental, interest and dividend income from their personal investments).

MAS' Response

5.2.3 It is not MAS' intent to prohibit FA representatives from conducting non-FA activities, where they are doing so on behalf of their principals authorised to conduct such non-FA activities. MAS will amend the legislation to make this clear.

5.2.4 It is also not MAS' intent to prohibit FA representatives from all non-FA activities. Unless expressly prescribed under regulation 38C(1)(d) of the draft FA (Amendment 2) Regs, FA firms can exercise discretion to allow their FA representatives to conduct non-FA activities, so long as the FA firms ensure that their representatives' involvement in any non-FA activities:

(a) do not conflict with the FA firm's business;

(b) do not tarnish the image of the FA industry; and

(c) do not lead to a neglect of the representative's FA role.

5.3 Approval and Disclosure of the Conduct of Non-FA Activities

5.3.1 Two respondents were of the view that the requirement for an individual with other gainful employment in non-FA activities to obtain his other employer's approval before being appointed as an FA representative is not practical, especially in cases where the individual is the sole proprietor of the non-FA business. Another respondent requested that MAS considers allowing an existing FA representative to continue with any gainful employment in non-FA activities without having to disclose his status as an appointed representative to his other employer.

MAS' Response

5.3.2 We are of the view that it is a fair practice for an individual with gainful employment in non-FA activities and wishes to work concurrently as an FA representative, to seek the prior endorsement of his current employer. Where the individual himself operates a non-FA business as a sole proprietor, he should disclose the fact for the FA firm to ensure that the conditions under regulation 38C(1) of the draft FA (Amendment 2) Regs are satisfied.

5.3.3 MAS will grandfather existing FA representatives with other gainful employment in non-FA activities from the requirement to disclose their status as appointed representatives to their other employers when the legislation takes effect. Notwithstanding the above, FA firms are still required to assess all non-FA activities of existing FA representatives to ensure that the conditions under regulation 38C(1) of the draft FA (Amendment 2) Regs are satisfied. For existing FA representatives who enter into other gainful employment in non-FA activities after the legislation takes effect, they will be required to disclose this to their FA firms.

5.4 Ongoing Monitoring

5.4.1 One respondent requested guidance from MAS on the monitoring systems and controls to be implemented by an FA firm to ensure that the conduct of non-FA activities by its representatives do not conflict with the FA firm's business, tarnish the image of the FA industry, and lead to a neglect of the representative's FA role.

MAS' Response

5.4.2 MAS recognises that FA firms may adopt different approaches to monitor the non-FA activities of their FA representatives. For example, FA firms could conduct independent checks with their clients to ensure that their representatives who conduct non-FA activities have not acted in ways that may pose reputational or market conduct risks when performing FA services. FA firms should also implement systems and controls that are commensurate with the nature, scale and complexity of their business.

6 Making Financial Advising a Dedicated Service − Use of Introducers by FA Firms

6.1 Providing Factual Information on Investment Products

6.1.1 In relation to the removal of "providing of factual information to any client on investment products" from the definition of introducing activity, several respondents sought clarification on whether an introducer will still be allowed to provide factual information on investment products, such as product brochures, names of product manufacturers and fund managers, as well as specific names of investment products, in the course of carrying out an introduction. One respondent commented that disallowing the mention of specific investment products during an introduction is not practical as clients may want to know the investment products sold by the FA firms.

6.1.2 Some respondents also provided feedback that FA firms which are acting as introducers should be allowed to provide factual product information such as product fact sheets to clients who request such materials.

MAS' Response

6.1.3 Information on specific investment products should not be provided to clients during an introduction, because the FA representative is better placed to advise the client on specific investment products, after going through the fact-find and needs analysis process, and ensuring that the specific products mentioned are suitable for the client. To clarify, the introducer can still describe the types of services and products that the FA firm is able to provide.

6.1.4 Representatives of FA firms who are also acting as introducers are not prohibited from providing clients with factual product information such as product factsheets, provided that they do this in their capacity as FA representatives, and not as an introducer under regulation 31 of the Financial Advisers Regulations (FAR).

6.2 Due Diligence Process for Introducers

6.2.1 FA firms will be required to put in place policies and procedures to monitor or review the introducers' introducing activities with retail clients, as set out in paragraph 8 of the revised Notice on the Appointment and Use of Introducers by Financial Advisers (FAA-N02). Some respondents provided feedback that paragraphs 8(d), 8(e) and 8(f) of the revised FAA-N02 imply that there is a need for FA firms to conduct continuous monitoring/review of the introducer. They requested more flexibility on the frequency for conducting such monitoring/review using a risk-based approach, provided that such review of the introducer is conducted at least annually. One respondent also provided feedback that such monitoring/review should be conducted not more than once every year.

6.2.2 MAS will also be requiring FA firms to put in place policies and procedures to collect information on persons they intend to appoint as introducers, as part of the due diligence process before appointing them as introducers to carry out introducing activities with retail clients. One respondent requested that the “adverse information” to be collected on the introducer, as set out in paragraph 8 of the revised FAA-N02, should be limited to information relating to any introducing activities performed by the introducer. The same respondent also provided feedback that the scope of information to be collected by the FA firm, as part of the ongoing monitoring process set out in paragraph 8(e) of the revised FAA-N02, should be limited to information relating to introducing activities carried out on behalf of that FA firm only.

6.2.3 Some respondents also provided feedback that the introducer may not be aware, and may not be able to verify, whether the client being introduced is a retail client. Therefore, additional requirements on the introducing arrangements involving the introduction of retail clients should not be imposed as the checks on whether a client is retail or non-retail takes place only after an introduction.

MAS' Response

6.2.4 We will provide clarification in the revised FAA-N02 that the requirement is for FA firms to conduct periodic/regular reviews of the introducer, and its or his introducing activities. In this regard, FA firms should minimally conduct annual reviews.

6.2.5 Paragraph 7 of the revised FAA-N02 states that an FA firm shall institute adequate policies and procedures to assess, and to satisfy itself, that the following principles are observed at the time of appointment of the person as an introducer and on an on-going basis:

(a) The appointment of the person as an introducer will not give rise to any actual or potential conflict of interests to the FA firm; and
(b) The appointment of the person as an introducer will not tarnish the image of the FA firm or the FA industry.

In this regard, the information which FA firms are required to collect should be sufficient to enable the FA firm to assess that the two principles above are met. As such, the adverse information collected should not just be in relation to introducing activities performed, as other types of adverse information (for instance, convictions by a court of law) could be necessary in order for the FA firm to assess that the two principles above are met. With respect to paragraph 8(e) of the revised FAA-N02, an FA firm is not expected to collect information on introductions made by the introducer to other FA firms.

6.2.6 The current introducer requirements apply to all clients, whether they are retail or non-retail clients. As stated in the MAS' Response to the Public Consultation on the FAIR Recommendations on 30 September 2013, the requirements under FAIR (including the additional introducer requirements) will apply only to retail clients. However, if introducers are not able to establish whether the clients they are introducing are retail or non-retail clients, they should treat all clients as retail clients, to avoid inadvertent breaches of the law.

6.3 Restriction on Acting as Introducer in Respect of Products for which the FA Firm is Authorised to Give Advice

6.3.1 Paragraphs 7(12) and 7(15) of the draft Financial Advisers (Amendment No. 1) Regulations 2015 (FA (Amendment 1) Regs) state that

the exemption for introducing activity in regulation 31 of the FAR shall not apply to an FA firm who provides the same type of FA service in respect of the same investment product or type of investment product as the introducee to whom the FA firm intends to introduce or introduces any retail client, unless the introduction is done pursuant to an express request by the retail client. One respondent requested that MAS reconsider the restriction set out in paragraphs 7(12) and 7(15) of the draft FA (Amendment 1) Regs, and to allow FA firms to act as introducers, even if the FA firms are authorised to give advice on that investment product or type of investment product, subject to obtaining the express written consent of their retail clients.

6.3.2 The same respondent provided feedback that this restriction, if implemented, could have unintended consequences in terms of limiting clients' access to FA firms which provide FA services, and that there could be legitimate situations where an FA firm may have performed fact-find and needs analysis in the process of engaging the client, before deriving the decision to introduce the client to another FA firm for specialised advice on a class of products, or a specific product within that class. In such situations, the client may have to rely on the introducer to uncover his particular financial needs during the fact-find and needs analysis process.

MAS' Response

6.3.3 We do not agree that clients' access to FA firms which provide FA services will be limited by paragraphs 7(12) and 7(15) of the draft FA (Amendment 1) Regs. To clarify, paragraphs 7(12) and 7(15) of the draft FA (Amendment 1) Regs do not prohibit an FA firm from referring clients to other FA firms. However, in making such referrals, the FA firm would not be acting as an 'introducer' under regulation 31 of the FAR, but as an FA firm. Specifically, the FA firm would be deemed as advising the client that the investment product or type of investment product is suitable for the client.

6.3.4 In the scenario described by the respondent, the role of the FA firm (in carrying out fact- find and needs analysis, before deciding to make the referral) is consistent with that of an FA firm providing FA services.

6.4 Applicability of Introducer Requirements for Overseas Clients/ Introducers and Arrangements outside the Scope of FA Services under the FAA

6.4.1 Some respondents sought clarification on whether the introducer requirements will be applicable to:

(a) introducers who are based overseas;
(b) introducers who introduce overseas clients; and
(c) the introduction of clients in respect of activities not regulated under the FAA (such as introducing clients in relation to regulated activities like 'dealing in securities' or 'advising on corporate finance' under the Securities and Futures Act (SFA)).

MAS' Response

6.4.2 The introducer requirements apply to all introducers and clients, in relation to the FA firms' business activities under the FAA, regardless of whether the introducers/clients are based in Singapore or overseas. The making of introductions or referrals to persons conducting regulated activities under the SFA is outside the scope of the requirements for introducers under the FAA. However, persons making such introductions or referrals should ensure that all other relevant rules and regulations, such as the licensing and business conduct requirements under the SFA, are complied with.

6.5 Applicability of Introducer Requirements for FA Firms Carrying Out Introducing Activities with Non-Retail Clients

6.5.1 An FA firm that carries out introducing activities for one or more introducees, or whose employees or representatives carry out introducing activities on its behalf, will be required to put in place policies and procedures for the oversight of such introducing activities, as set out in paragraphs 17 and 18 of the revised FAA-N02. Some respondents sought clarification on whether the requirements to put in place the policies and procedures set out in paragraphs 17 and 18 of the revised FAA-N02 are applicable only if the clients introduced are retail clients.

MAS' Response

6.5.2 Unless otherwise specified, the requirements set out in paragraphs 17 and 18 of the revised FAA-N02 will apply to all FA firms conducting introducing activities, regardless of the type of clients being introduced. As stated in paragraph 18(a) of the revised FAA-N02, the requirement for the FA firm's employees or representatives to use the Client Acknowledgement Form (CAF) applies only "when carrying out introducing activities with any retail client".

6.6 Applicability of Introducer Requirements for Specialised Units Serving High Net Worth Individuals[1] (HNWIs)

6.6.1 Some respondents asked whether:

(a) Specialised units serving HNWIs under section 100(2) of the FAA, which are currently exempted from FAA-N02, will be subject to the requirements under the revised FAA-N02; and
(b) the definition of “retail client” in paragraph 7(23) of the draft FA (Amendment 1) Regs also includes HNWIs.

MAS’ Response

6.6.2 Specialised units serving HNWIs that are exempted under section 100(2) of the FAA will continue to be exempted from the requirements under the revised FAA-N02. The definition of "retail client" in the draft FA (Amendment 1) Regs will exclude clients of such specialised units.

[1] The definition of High Net Worth Individuals, as set out in the Guidelines on Exemption for Specialised Units Serving High Net Worth Individuals under section 100(2) of the FAA:
“high net worth individual” is an individual –
(a) who has a minimum of S$1 million of assets, or the equivalent in foreign currencies, in any or all of the following forms:
  (i) bank deposits, including structured deposits;
  (ii) capital markets products;
  (iii) life policies;
  (iv) other investment products as may be prescribed by the Authority;
(b) whose total net personal assets exceed S$2 million in value or the equivalent in foreign currencies;
(c) whose annual income is not less than S$300,000 or the equivalent in foreign currencies; or
(d) who is assessed by the applicant to have the potential to become a person described in (a) within a period of 2 years.

6.7 Applicability of Introducer Requirements for Intra-group Referral Arrangements

6.7.1 One respondent provided feedback that FA firms belonging to the same corporate group should be exempted from complying with introducer requirements on the basis that retail clients are dealing with firms within the same group, and would not be confused as to whether the FA firms within the group are acting as introducers or as FA firms providing FA services.

MAS' Response

6.7.2 We have considered the feedback to exempt introductions to FA firms within the same group from the introducer requirements. We are of the view that the introducer requirements are equally relevant, even where the introduction is to another firm within the same group. The requirements provide for safeguards, such as providing clarity to clients on which entity within the group the client is dealing with (and has recourse to), and whether there are potential conflicts of interests.

6.8 Applicability of Introducer Requirements for In-house Introducers

6.8.1 One respondent provided feedback that employees or representatives of FA firms, who introduce clients to the FA firm, should not be deemed as conducting introducing activities. Another respondent sought clarification on whether paragraph 7(15) of the draft FA (Amendment 1) Regs, which prohibits a person from acting as an introducer in respect of the same investment product or type of investment product which that person is authorised to provide FA service on, applies to in-house introducers.

MAS' Response

6.8.2 Employees or representatives who conduct introducing activities on behalf of their employer are currently exempt from complying with sections 25, 27 and 36 of the FAA in respect of all introducing activities they carry out on behalf of the FA firm subject to conditions set out in paragraphs (5), (6) and (8) of regulation 31 of the FAR being met. In addition, as set out in paragraph 8 of the current FAA-N02, FA firms are required to ensure that requirements

relating to disclosure, provision of script, prohibition on handling of client's money or property, are complied with where introducing activities are carried out by their employees or representatives on their behalf. These conditions and requirements will continue to apply after the legislative amendments to regulation 31 set out in the draft FA (Amendment 1) Regs and the revised FAA-N02 have taken effect.

6.8.3 Paragraph 7(15) of the draft FA (Amendment 1) Regs does not apply to in-house introducing arrangements, where employees or representatives (as the case may be) of an EFA carry out introducing activities on its behalf. However, the requirements as set out in the revised FAA-N02 which apply to an EFA which carries out introducing activities on its own behalf, must be adhered to.

6.9 Applicability of Client Acknowledgement Form (CAF) for In-house Introducing Arrangements

6.9.1 Introducers who carry out introducing activities on behalf of FA firms for retail clients must use the CAF as a script. One respondent provided feedback that it is not necessary for the CAF to be used where in-house introducing arrangements are concerned, given that such cross-selling arrangements are common and the FA firm who appoints its own employees to conduct introducing activities on its behalf will still be responsible for ensuring that proper advice is given to the clients in line with the applicable requirements under the FAA and FAR. Another respondent also highlighted that it is not necessary for an in-house introducer to disclose information on the FA firm, such as the name of the FA firm and type of FA services provided by the FA firm, since the in-house introducer is already an employee of the FA firm.

MAS' Response

6.9.2 We note the feedback, and agree that the CAF would not be applicable for in-house introducing arrangements. However, the existing disclosure requirements as set out in paragraph 12 of the revised FAA-N02, for introducers to use a script provided by the FA firm that contains information which the introducer is required to disclose, will continue to apply for in-house introducing arrangements.

6.10 Other Feedback on CAF

6.10.1 One respondent provided feedback that it may not be practical for a physical copy of the CAF to be provided to the retail client immediately after the retail client has given his acknowledgement and consent to be introduced to the FA firm as set out in paragraph 13(d) of the revised FAA-N02. Two respondents requested MAS to allow introducers to send the CAF to the retail client electronically (e.g. via email) or for the retail client's acknowledgement to be obtained electronically or over the phone.

6.10.2 One respondent also asked whether a financial institution which is acting as an introducer may rely on existing Personal Data Protection Act (PDPA) compliance procedures and forms to incorporate the necessary clauses instead of incorporating them in the CAF.

MAS' Response

6.10.3 Paragraph 13(d) of the revised FAA-N02 already provides sufficient flexibility in terms of when the introducer must provide the client with a copy of the CAF. It is not a requirement for the introducer to provide the client with the CAF immediately after the client signs the CAF, at the same meeting.

6.10.4 The physical signature of the client serves to authenticate the acknowledgement obtained from the client for the CAF. Other than obtaining the acknowledgement via a physical signature, MAS will not preclude other methods of authenticating a client's acknowledgement of the CAF, including using electronic means or taped phone recordings.

6.10.5 Financial institutions are best placed to decide for themselves how best to ensure compliance with the PDPA requirements. Some financial institutions may prefer to rely on existing processes/measures to ensure compliance, while other financial institutions may prefer to include disclaimers in the CAF.

6.11 Retention Period

6.11.1 With respect to paragraph 13 of the revised FAA-N02, which requires an FA firm to retain records of every retail client's acknowledgement and consent obtained by the introducer, one respondent requested the period of

retention of such acknowledgement and consent to not exceed a period of two years from the date on which the acknowledgement and consent is obtained or the date on which the FA firm ceases to use the information of the retail client.

MAS' Response

6.11.2 The retention period for the retail client's acknowledgement and consent is five years, in alignment with the retention period for client-related information as stated in regulation 26 of the FAR.

7 Promoting a Culture of Fair dealing − Commission Payout Structure of Regular Premium Life Insurance Products

7.1 *Proposed Definition of "Relevant Life Policy"*

7.1.1 Two respondents queried whether yearly renewable policies[2] would be caught under the proposed definition of "relevant life policy"[3].

7.1.2 Several respondents also suggested excluding group life policies from the spreading and capping of commissions[4] (SOC) requirements since the purchasing decision, as well as benefits and features of a group life policy are determined by the policy owner (typically a large organisation or employer) on behalf of the insured employees or members. Such organisations would have internal guidelines and authorised officers to evaluate and decide on the purchase of group life policies from the insurance company.

[2] Yearly renewable policies are guaranteed to be renewable on an annual basis, at a new premium rate.

[3] MAS proposed to define "relevant life policy" as "a life policy which –
(a) premiums are paid or payable on a periodic basis and each periodic payment is for a period of up to one year; and
(b) policy owner or insured, or both, as the case may be, is a person other than an accredited investor, expert investor or institutional investor".

[4] Under the spreading and capping of commissions requirement, total commissions payable on a regular premium life policy have to be spread over a minimum period of (i) 6 years or (ii) the premium payment period of the policy, whichever is the shorter. The commissions payable within the first year of a policy have to be capped at 55% of total commissions.

MAS' Response

7.1.3 As set out in the MAS' Consultation on Recommendations of FAIR issued on 5 March 2013, the SOC requirements will only apply to regular premium life policies. As yearly renewable life policies are considered regular premium life policies, the SOC requirement will apply to such policies.

7.1.4 For group life policies, given that the purchasing decision lies with the organisation or employer and not with the individual retail client, MAS agrees to exclude group life policies from compliance with the SOC requirements. We will revise the definition of "relevant life policy" to exclude group life policies.

7.2 Remuneration Components Considered as "Specified Commissions"

7.2.1 MAS proposed a definition for "specified commissions" in relation to a life policy under the draft Insurance (Remuneration) Regulations and draft Financial Advisers (Remuneration and Incentive) Regulations. In this regard, the industry sought clarification on the type of remuneration components which would be considered as "specified commissions" and hence subject to the SOC requirements.

MAS' Response

7.2.2 Life insurance is distributed in Singapore through three main channels, namely agencies, LFAs and banks. Under the agency and LFA channels, insurance agents and LFA representatives typically receive first year commissions and renewal commissions which are attributable to the sale of a specific life policy (i.e. policy-specific remuneration), as well as other bonuses, incentives and benefits. Unlike the life insurance industry, most banks do not pay their representatives policy-specific remuneration. Instead, bank representatives typically receive a fixed monthly salary and variable incentives. Such variable incentives are sales-dependent and akin to the first year commissions and renewal commissions received by insurance agents and LFA representatives. To achieve the objectives of the SOC initiative and to ensure a level playing field, the SOC requirements will be applied according to the different remuneration models of the various channels.

7.2.3 In this respect, for FA representatives who are paid fully and largely on commissions, "specified commissions" will include only remuneration which is directly attributable to the sale of a specific life policy. Such policy-specific remuneration would typically include first year commissions and renewal commissions. Remuneration paid on a portfolio basis, such as persistency bonus, will be excluded.

7.2.4 However, for FA representatives who are remunerated based on a fixed salary and a variable incentive component, their variable incentives will be caught under the definition of "specified commissions" and subject to the SOC requirements.

7.2.5 Taking into account the different remuneration models of the various distribution channels, we will amend the proposed definition of "specified commissions" accordingly.

7.3 Payment and Receipt of Specified Commissions

7.3.1 MAS proposed that insurers or FA firms pay specified commissions at least once a year. Several respondents sought clarification on the intent of this requirement.

7.3.2 Some respondents asked whether the remaining commissions payable after the first commission payout have to be spread evenly from the second year onwards.

MAS' Response

7.3.3 MAS requires specified commissions to be spread over a minimum period of six years or the premium payment period of the policy, whichever is the shorter (relevant period). The intent of paragraph 7.3.1 is to ensure that specified commissions are paid every year during the relevant period. For example, FA firms are not permitted to pay specified commissions during the first and sixth year of the relevant period, with no commission payouts from the second to the fifth year.

7.3.4 MAS will not require the commissions paid out after the first year to be spread out evenly. However, we expect the industry to adopt a remuneration

structure which will achieve the objective of incentivising FA firms and their representatives to provide good advice as well as ongoing services to clients. MAS will monitor the effectiveness of the SOC initiative and may fine-tune this rule in future, if required.

7.4 Grace Period for Pipeline Cases

7.4.1 Pipeline cases refer to cases where applications for life policies have been received by insurers and which are pending underwriting and issuance as at the date the SOC requirements come into effect (Effective Date). Several respondents requested MAS to grant a grace period of 90 days during which pipeline cases do not need to comply with the SOC requirement. This is because the benefit illustrations and total distribution cost projections for such policies are based on the pre-Effective Date remuneration structure, while the actual remuneration payable will be based on the post-Effective Date remuneration structure as the policies will be issued post-Effective Date.

MAS' Response

7.4.2 Taking into account the industry's feedback, MAS agrees to exclude all pipeline cases from compliance with the SOC requirements. However, we will require insurers to document the date of receipt of pipeline cases and report the number of such cases to MAS. We will provide further details on the reporting requirements in due course.

8 Promoting a Culture of Fair dealing − Balanced Scorecard (BSC) Framework for Remuneration of FA Representatives and Supervisors

8.1 Applicability of the BSC Framework

8.1.1 Several respondents from the industry sought clarification on whether the BSC framework will apply to FA firms and representatives who:

(a) do not perform financial needs analysis or provide recommendations on investment products to clients;

(b) provide market updates and recommendations to clients based on market research when performing rollover transactions in relation

to investment products such as dual currency investments (DCIs), equity-linked notes (ELNs) and commodity-linked structured investments (CLSIs);

(c) provide after-sales services to clients, including performing top-ups, increases in insurance premiums, fund switches and premium redirections;

(d) handle subscriptions and redemptions of CIS on an execution-only basis to certain investors, such as employees of the FA firm, without providing any recommendation on the CIS; or

(e) solely execute trades for clients who have been assessed to have the knowledge and experience to transact in unlisted specified investment products.

8.1.2 Several respondents also asked how the proposed "opt-in" regime[5] for AIs as set out in the Consultation Paper on Proposal to Enhance Regulatory Safeguards for Investors in the Capital Markets dated 21 July 2014 would affect FA firms which currently serve only AIs and are exempted from the BSC requirements.

8.1.3 In addition, MAS received suggestions from the industry to exempt FA firms which provide FA services to non-individual clients, which do not fall under the definition of AIs and IIs, from the BSC framework. Some respondents also proposed to exempt FA firms providing FA services in respect of group life policies from having to comply with the BSC requirements.

8.1.4 One respondent sought clarification on whether accident and health (A&H) policies are included within the scope of the BSC framework.

MAS' Response

8.1.5 MAS would like to reiterate that the BSC framework will apply only to FA firms which provide recommendations in respect of investment products by which section 27 of the FAA is applicable. FA firms should assess the roles performed by their representatives and determine if their activities fall within the ambit of section 27 of the FAA.

[5] Under the proposed "opt-in" regime, all investors other than IIs would be treated as retail investors by default. Any investor who meets any of the criteria stipulated in the AI definition would have the choice of electing for retail or AI status.

8.1.6 MAS would like to clarify that if the proposed "opt-in" regime for AIs is adopted, an AI-eligible client is a non-AI until the client has "opted-in" to be an AI. Accordingly, FA firms who wish to continue relying on exemptions when serving AIs (including exemptions from BSC requirements) would need to ensure AI-eligible clients "opt" to be AIs.

8.1.7 Taking into consideration the feedback from the industry, MAS agrees to exempt FA firms providing FA services to non-individual clients from the BSC framework given that the framework is targeted at retail individual clients. Non-individual clients are also likely to possess a higher level of financial expertise and sophistication that would enable them to make their own investment decisions and risk assessments. MAS also agrees to exempt FA firms providing FA services in respect of group life policies from the BSC framework. The decision by an employer to purchase group life policies for or on behalf of its employees is largely determined by the employer's financial budget and its employee benefits philosophy. In addition, MAS has not received any complaints in relation to the mis-selling of group life policies in the past ten years.

8.1.8 We would like to clarify that the BSC framework only applies to investment products, which include life policies, under the FAA. A&H policies are not included under the BSC framework.

8.2 Definition of a "Supervisor"

8.2.1 MAS proposed to define a "supervisor" as (a) any person, who is in the direct employment of, or acting for or by arrangement with, the FA firm, and is responsible for the supervision or management of the conduct and performance of any representative or class or representatives of the FA firm ("first-mentioned person"); or (b) any person, who is in the direct employment of, or acting for or by arrangement with, the FA firm, and is responsible, whether directly or indirectly, for the supervision or management of any representative or class or representatives of the FA firm or the first-mentioned person or both.

8.2.2 Some respondents proposed to restrict the definition of "supervisor" to a person who has direct supervision or management over the conduct and performance of representatives (direct supervisor), who receives variable income and who is appointed as a representative of the FA firm. They were of the view that the BSC framework should not capture the line managers of

direct supervisors whose job scope may not be related to the provision of FA services.

MAS' Response

8.2.3 MAS disagrees to restrict the definition of "supervisor" to direct supervisors. All supervisors, whether direct or indirect, play an important role in coaching, monitoring and guiding the conduct of their representatives. As such, it is our intention to capture all tiers of supervisors under the BSC framework as long as they have responsibilities for the supervision or management of the conduct and performance of any representative. This is regardless of whether they have direct or indirect responsibilities or are appointed as representatives of the FA firm. Notwithstanding that, how the remuneration of these supervisors may be affected under the BSC framework would depend on whether they receive variable income or otherwise. If the supervisor is remunerated by way of variable income and, likewise, the representatives under his supervision are remunerated by variable income, the supervisor's variable income will be directly affected by his representatives' performance under the BSC framework regardless of whether he has direct or indirect oversight over the representatives. On the other hand, if the supervisor is not remunerated by way of variable income or if he is remunerated by way of variable income but none of the representatives under his supervision are remunerated by way of variable income, the supervisor's remuneration will not be affected by his representatives' performance under the BSC framework. However, the FA firm should factor the BSC performance of these representatives into the supervisor's appraisal, including remuneration and promotion reviews.

8.3 Definition of "Transaction"

8.3.1 MAS proposed to define "transaction" for the purpose of post-transaction checks performed by the Independent Sales Audit (ISA) unit, to mean any purchase or sale of, or other dealings in connection with an investment product by a client, such as partial sales, redemptions or changes in the sum assured of a life policy.

8.3.2 Several respondents suggested to exclude partial sales, redemptions or decreases in sum assured of a life policy from the definition given that the initial purchase by the client would have been subject to sampling under the BSC framework and such transactions are typically conducted without

financial advice. In addition, FA representatives are usually not remunerated or incentivised for facilitating such transactions for clients. A few respondents sought clarification on whether top-ups for investment-linked policies or addition of riders to life policies fall within the definition of "transaction". Some respondents also suggested that MAS exclude the following from the definition of "transaction":

(a) Rollover transactions pertaining to investment products such as DCIs, ELNs and CLSIs where the FA firm makes a recommendation on the currency pairs, underlying equity or commodity respectively to the client, notwithstanding that there are no changes in the investment amount, financial situation and risk profile of the client; and
(b) The purchase leg of any switch of funds for an investment-linked policy or CIS which is free of charge or where no additional charge for the switch is borne by the client.

8.3.3 One respondent sought clarification on whether transactions effected for clients where only execution-related advice is provided would be included in the definition of "transaction".

MAS' Response

8.3.4 MAS acknowledges that the focus of post-transaction checks by the ISA unit should be placed on certain types of transactions which are more susceptible to mis-selling or inappropriate advice provided by representatives. We consider transactions where incentives are provided to representatives to be more susceptible to such risks. As such, MAS agrees to exclude partial sales, redemptions, decreases in sum assured of a life policy, or the purchase leg of any switch of funds for an investment-linked policy or a CIS which is free of charge or where no additional charge for the switch is borne by the client, from the definition. On the other hand, any top-ups for an investment-linked policy, increase in sum assured of a life policy, addition of riders to a life policy, or any rollover transactions pertaining to investment products such as DCIs, ELNs and CLSIs will be included within the definition of "transaction" as the FA representative is typically remunerated for performing such transactions.

8.3.5 In this regard, MAS will revise the definition of "transaction" to mean any purchase of an investment product by a client, and includes, in the case

of any life policy, any increase in the sum assured involving the injection of new funds or any addition of riders to the life policy, but does not include the purchase leg of any switch of funds for an investment-linked policy or a CIS, which is free of charge or where no additional charge for the switch is borne by the client.

8.3.6 As dealers providing execution-related advice are exempted from the requirements of the BSC framework, all transactions conducted by such dealers will not fall within the BSC framework.

8.4 Definition of "Selected Representative"

8.4.1 MAS proposed to define "selected representative" as a representative (a) who has been assigned a BSC grade "B" or worse under the BSC framework in the preceding 12 months; (b) who has adverse records in the preceding five years; (c) who has a two-year persistency rate that is lower than 75% for the sale of any contract of insurance in respect of life policies; or (d) who is subject to close supervision by his principal in relation to his provision of FA services.

8.4.2 Some respondents suggested that MAS restrict the definition of "selected representative" to limb (a) given that limbs (b) to (d) have no bearing on a representative's performance under the BSC framework. In addition, they proposed for a representative to cease to be categorised as a selected representative once he obtains a BSC grade "A" in the next calendar quarter. Several respondents suggested shortening the five year period set out in limb (b) to one year or allowing the five year period to commence from the date the legislative requirements for the BSC framework takes effect. Other respondents requested clarification on what constitutes an adverse record. For limb (c), some respondents provided feedback on the difficulties faced in computing persistency rates due to a lack of data provided by insurers, or complications arising from discontinued business relationships with insurers, premium holidays exercised by clients or receipt of data from more than one insurer. One respondent proposed to remove limb (d) on the basis that full-scale independent checks would have been conducted by the ISA unit on representatives under close supervision.

MAS' Response

8.4.3 MAS has considered the feedback. Given that there are other existing safeguards put in place by FA firms to monitor representatives who fall under limbs (b) to (d), MAS agrees to remove these limbs and to confine the definition of "selected representative" to limb (a) only, which measures the representative's performance under the BSC framework. In addition, as our intent is to only capture representatives with consistently poor BSC performance and at the same time take into account improvements in representatives' BSC performance, we will amend limb (a) to mean a representative who has been assigned a BSC grade "B" or worse under the BSC framework consecutively for two calendar quarters immediately preceding the calendar quarter whereby the representative's performance is measured. For example, if an FA representative obtains a BSC grade "B" or worse for the first and second calendar quarters, he will be classified as a selected representative for the third calendar quarter. If the FA representative obtains a BSC grade "A" for the third calendar quarter, he will no longer be a selected representative in the fourth calendar quarter.

8.5 Definition of "Selected Clients"

8.5.1 MAS proposed to define "selected client" as a client who meets any two of the following criteria: (a) is 62 years of age or older; (b) is not proficient in spoken or written English unless the representative provides FA services to the client in a language (other than English) which the representative and the client are proficient in and all sales documentation provided to the client is written in that language; or (c) has secondary education or below.

8.5.2 Two respondents suggested revising the definition of "selected clients" by removing the age criterion or increasing the age criterion from 62 to 67. Several respondents requested clarification on what constituted "secondary education" as there could be equivalent qualifications from foreign institutions. Some respondents felt that elderly clients or clients with secondary education who are professional traders or business owners with vast investment experience should not be classified as "selected clients".

MAS' Response

8.5.3 The intent for defining a "selected clients" category is to offer greater protection to the elderly and less educated as they may not be able to

safeguard their own interests. MAS notes that the current statutory minimum retirement age under the Retirement Age Act is 62. As such, we are of the view that the age criterion of 62 is appropriate.

8.5.4 MAS agrees with the suggestion to provide clarity on "secondary education" and will revise the academic qualifications criterion to include clients who have academic qualifications that are below "GCE 'O' or 'N' levels or equivalent". MAS also agrees that the investment experience of a client should be taken into consideration and will accordingly allow FA firms to deviate from the definition of "selected clients" if they have assessed a person to have the relevant investment experience.

8.6 Definition of "Post-Transaction"

8.6.1 MAS proposed to define "post-transaction" to refer to the period of time from when a client's application for a transaction has been accepted by a product manufacturer.

8.6.2 We received feedback from some respondents that it is unclear when the FA firm should consider a transaction in relation to a life policy to be accepted by the product manufacturer, especially in cases where the life policy has been issued but the effective commencement date of the cover is pre-dated or post-dated, or where the life policy may not have come into legal effect notwithstanding that partial cover has commenced.

8.6.3 One respondent asked whether FA firms can be given the flexibility to sample transactions before the client's application for a transaction has been accepted by a product manufacturer in view that there is a material lag time between the application submission and acceptance by the product manufacturer. The respondent was also of the view that a transaction should be deemed to be completed once the application has been submitted to the product manufacturer.

MAS' Response

8.6.4 Our intention is for post-transaction checks to be performed on transactions soon after the FA representative receives or is entitled to remuneration for the transaction. In the case of a life policy where the FA firm is uncertain when the client's application for a transaction is considered to be accepted by the product manufacturer, it may conduct post-transaction

checks after (i) the policy is issued; (ii) the policy takes effect; or (iii) the cover has commenced, whichever is the latest. For all other investment products, the FA firm may conduct post-transaction checks after the client's application for a transaction has been accepted by the product manufacturer.

8.7 Applicability of Disclosure Requirements set out in FAA-G09 and FAA-N11 under Non-Sales Key Performance Indicator (KPI) 3 on "Adequacy of Information Disclosure"

8.7.1 Under non-sales KPI 3 "Adequacy of Information Disclosure", MAS proposed that FA firms and their representatives make reference to the Notice on Information to Clients and Product Information Disclosure (FAA-N03) on the type of information that must be disclosed to clients.

8.7.2 One respondent sought clarification on whether the disclosure requirements set out in the Guidelines on Structured Deposits (FAA-G09) and Notice on Dual Currency Investments (FAA-N11) are applicable under the BSC framework.

MAS' Response

8.7.3 The intent is to apply all disclosure requirements set out in the various Notices and Guidelines issued by MAS for investment products under the FAA. MAS will revise non-sales KPI 3 to include the disclosure requirements set out under FAA-G09 and FAA-N11.

8.8 Definition of "Variable Income" in relation to an FA Representative

8.8.1 MAS proposed to define "variable income" in relation to a representative to mean the amount of remuneration provided or to be provided to the representative, whether on a periodic basis or otherwise, which varies and is directly dependent, wholly or partly, on one or more of the following: (i) the volume or value of investment products in relation to which FA services are provided by the representative to clients; (ii) the volume or value of agreements, transactions or arrangements relating to any investment product, entered into by clients to whom the representative provided any FA service; (iii) the volume of fees or charges relating to any investment product, paid by clients to whom the representative provided any FA service; or (iv) the

volume or premiums relating to any life policy, paid by clients to whom the representative provided any FA service.

8.8.2 One respondent asked whether remuneration paid in the form of a fixed allowance for a specified period of time constitutes variable income. Some respondents sought clarification on whether persistency bonuses, wrap fees, or trailer fees paid to representatives would fall under the definition of variable income.

MAS' Response

8.8.3 Remuneration which is of a fixed amount paid regularly regardless of sales performance will not fall under the definition of "variable income". For other forms of remuneration, given the wide range of terminology used by the industry and the differences in how FA firms structure their remuneration packages, it is not appropriate for MAS to prescribe specifically the types of remuneration caught under the definition of "variable income". FA firms are best placed to assess whether a particular type of remuneration falls within the definition of "variable income".

8.9 Variable Income for Supervisors

8.9.1 MAS proposed to define "variable income" in relation to a supervisor to mean the amount of remuneration provided or to be provided to the supervisor, whether on a periodic basis or otherwise, which varies and is directly dependent, wholly or partly, on: (i) the volume or value of investment products in relation to which FA services are provided by a representative, who is under the supervision or management of the supervisor or any other person whom the supervisor manages or supervises, to clients; (ii) the volume or value of agreements, transactions or arrangements relating to any investment product, entered into by clients to whom a representative, who is under the supervision or management of the supervisor or any other person whom the supervisor manages or supervises, provided FA services; (iii) the volume of fees or charges relating to any investment product, paid by clients to whom a representative, who is under the supervision or management of the supervisor or any other person whom the supervisor managers or supervises, provided FA services; or (iv) the volume or premiums relating to any life policy, paid by clients to whom a representative, who is under the supervision or management of the supervisor or any other person whom the supervisor manages or supervises, provided FA services.

8.9.2 One respondent from the banking industry requested clarification on whether the portion of annual bonus for supervisors which is not attributed to the FA activities of the bank branch is subjected to the BSC framework. Another respondent sought clarification on how the entitlement to annual bonus should be calculated given that the supervisors' entitlement is calculated on a quarterly basis.

8.9.3 One respondent queried on the treatment of proxy or covering supervisors who do not receive any commissions but the transactions which they signed off are found to have infractions.

MAS' Response

8.9.4 MAS would like to clarify that for a supervisor who conducts both FA activities and non-FA activities, if the FA firm is able to segregate the portion of the supervisor's annual bonus which relates to FA activities from his total bonus, then only the segregated portion of the bonus which relates to his FA activities will be considered as the specified variable income for the supervisor and subject to the requirements under the BSC framework. Once an amount of annual bonus has been classified as specified variable income, the FA firm may apportion this annual bonus into four quarters based on any reasonable parameters such as volume of business or revenue of the supervisor's business unit in each quarter. The FA firm may then derive the amount of proportioned annual bonus the supervisor is entitled to in each quarter based on the percentage of specified variable income that the supervisor is entitled to in the respective calendar quarters.

8.9.5 For covering supervisors who do not receive any commissions in relation to the infractions uncovered, MAS agrees that the infractions will not affect the supervisors' variable income. However, we expect FA firms to factor these infractions into the supervisors' annual appraisal or review.

8.10 Scope of Post-Transaction Checks by the ISA Unit

8.10.1 MAS proposed to require the ISA unit to carry out and complete both documentation reviews and client surveys on every sampled transaction for each representative in a calendar quarter by no later than the end of the immediately subsequent calendar quarter.

8.10.2 Some respondents expressed concerns that having the ISA unit conduct client surveys on all sampled transactions would be resource intensive. Instead, they proposed for client surveys to be conducted only on transactions with red flag indicators arising from documentation reviews. One respondent proposed reducing the sample size of client surveys to one survey per representative in each calendar quarter.

8.10.3 Some respondents suggested for MAS to allow FA firms to conduct reviews of call-logs of conversations held with clients in lieu of documentation reviews and client surveys for rollover transactions in respect of investment products such as DCIs, ELNs and CLSIs. They explained that such transactions often take place over the phone and client surveys may not be effective as clients may not be able to recall details of their transactions due to multiple rollover transactions being performed over a short period of time.

8.10.4 Two respondents requested a longer timeline for the ISA unit to complete the post-transaction checks. Three respondents proposed to do away with post-transaction check for representatives who have resigned during the relevant calendar quarter or who are absent from work for a prolonged period of time.

MAS' Response

8.10.5 We disagree with the proposal to reduce the number of client surveys to be performed by the ISA unit. Client surveys are intended to capture infractions which may not be detected through documentation reviews. As such, they will need to be performed for every sampled transaction as a complement to documentation reviews.

8.10.6 MAS agrees to allow the ISA unit to review call-logs of conversations held with clients in lieu of documentation reviews and client surveys for rollover transactions in respect of investment products such as DCIs, ELNs and CLSIs as we recognise that this may be a more effective tool to assess the performance of representatives against the non-sales KPIs.

8.10.7 We will not provide a longer timeline for the ISA unit to complete its post-transaction checks. Instead, we will give FA firms flexibility to use the historical average transaction count method in the sampling methodology, as set out under paragraph 8.14.5 so that the ISA unit can plan for and commence its checks early. MAS recognises that there may be practical

difficulties in reviewing a representative's performance under the BSC framework if he resigns during the calendar quarter or is absent from work for a prolonged period. As such, we will allow FA firms to waive the BSC requirements for representatives who cease to provide FA services during the relevant calendar quarter or who do not provide FA services for a full calendar quarter provided that the FA firm has assessed and documented its assessment in writing that it is not possible for the FA firm to apply the requirements under the BSC framework.

8.11 Guidance on Post-Transaction Checks by ISA Unit

8.11.1 Under the draft Guidelines on the Balanced Scorecard Framework, Reference Checks and Pre-transaction Checks (BSC Guidelines), MAS proposed to allow an FA firm to treat a client survey conducted over the phone as being closed if the FA firm is unable to reach the client after three unsuccessful attempts, and a written client survey as being closed if the FA firm does not receive any response from the client within one month from the date the written survey is sent.

8.11.2 Several respondents commented that electronic surveys should have a shorter closure time given that there is no transit time for delivery of the survey to clients. One respondent proposed that client surveys via phone calls should be conducted on three different business days and deemed as closed after these three attempts.

MAS' Response

8.11.3 To take into account the feedback, MAS will reduce the response deadline for electronic surveys from three weeks to two weeks. MAS agrees with the suggested approach for FA firms to conduct phone calls on three different business days.

8.12 Annex 1 of the draft BSC Guidelines - Guidance for Documentation Review

8.12.1 Many respondents expressed concerns that the guidance for documentation review is too extensive and sought clarification on whether FA firms have the flexibility to modify Annex 1 to suit their business models. For instance, one respondent felt that certain questions may be more suitable for

insurance products only while other questions are meant for other types of investment products.

8.12.2 Another respondent commented that it is unnecessary to review whether assumptions provided by representatives in arriving at their recommendations are documented as it is not mandatory for representatives to provide assumptions for their recommendations.

8.12.3 Several respondents also sought clarification on whether representatives would be penalised if it was uncovered during documentation reviews that supervisors did not perform the necessary pre-transaction client call-backs to selected clients.

MAS' Response

8.12.4 Annex 1 is meant to be used as guidance for documentation review of transactions relating to all investment products, which include life policies. As such, FA firms may modify the assessment criteria or questions in the documentation review to suit their business needs or type of products transacted, without changing the substance of each assessment criteria or question.

8.12.5 MAS would like to clarify that the use of assumptions by representatives in their recommendations is not mandatory. However, where assumptions are used, the documentation review should ensure that such assumptions are reasonable and take into account the investment objectives, financial situation and particular needs of the client.

8.12.6 We would also like to assure representatives that they will not be penalised if their supervisors fail to conduct proper pre-transaction checks. The section on supervisor's checks in Annex 1 is meant to alert the ISA unit to check if the supervisor has conducted the pre-transaction client call-backs with selected clients.

8.13 Annex 2 of the draft BSC Guidelines – Guidance for Client Surveys

8.13.1 One respondent sought clarification on whether clients who have informed that they do not wish to participate in any form of survey could be excluded from post-transaction checks in respect of the client surveys.

8.13.2 Another respondent asked whether representatives would be penalised if clients select “Cannot recall” in response to any client survey questions.

8.13.3 MAS also received questions on whether FA firms could revise the wordings of the questions in Annex 2 to make them more client friendly and objective, for instance, by substituting the term “sales process” with “buying experience”.

MAS’ Response

8.13.4 MAS agrees that clients should have a choice not to participate in the client surveys. However, there must be proper audit trail of the clients’ decision.

8.13.5 MAS would like to clarify that as client surveys are only a mode to detect infractions, FA firms must conduct the necessary reviews and investigations before substantiating an infraction, regardless of whether clients indicated “Cannot recall” or indicated that they were dissatisfied with the advisory and sales process.

8.13.6 MAS agrees that FA firms may revise the language in the client surveys, where appropriate. However, to ensure the effectiveness of the client surveys, FA firms should be mindful not to change the substance of the questions in the survey.

8.14 Sampling Methodology

8.14.1 MAS proposed that the ISA unit conducts up to three rounds of post-transaction checks on the transactions effected by all representatives in the calendar quarter, with a fixed sampling size for each round of checks. The ISA unit will have to move on to the next round of check whenever an infraction is detected.

8.14.2 Two respondents suggested that FA firms be given flexibility to determine the sample sizes for each calendar quarter based on historical transaction count in the preceding year rather than actual transaction count in the calendar quarter. Doing so could facilitate the planning and execution of post-transaction checks by the ISA unit as sample sizes can be determined in advance. In addition, client surveys could be performed in a more timely

manner which improves accuracy of the surveys and enhances client participation rate.

8.14.3 Some respondents suggested to reduce the percentage sample sizes in each round of post-transaction checks for representatives who solely perform rollover transactions in respect of investment products such as DCIs, ELNs and CLSIs. This is due to the short maturity periods of such investment products, which result in a significantly higher number of rollover transactions performed by such representatives in each calendar quarter.

8.14.4 One respondent sought clarification on the rationale for having to perform a second round of post-transaction check on representatives who have committed at least one case of Category 1 infraction in the first round of check given that the representative would have already been assigned a BSC grade "E".

MAS' Response

8.14.5 MAS accepts that giving FA firms the flexibility to determine sample sizes based on historical transaction count could increase the efficiency of post-transaction checks performed by the ISA unit. In this regard, we will allow FA firms to choose to apply either the historical average transaction count method based on the representatives' quarterly average transaction count over the past 12 months or the actual transaction count method based on the actual number of transactions effected in the calendar quarter in determining the population for sampling. However, FA firms must ensure that the same method is consistently applied across all representatives and from quarter to quarter. If the FA firms intend to vary the method used, they have to notify MAS, in writing, of the reasons for the change at least seven days prior to effecting the change. For new representatives who have provided FA services for less than 3 months, FA firms will have to apply the actual transaction count method in determining the population for sampling.

8.14.6 To address the feedback received, MAS will reduce the sample sizes for representatives who solely perform rollover transactions in relation to investment products such as DCIs, ELNs and CLSIs to 2% in the first round of sampling, 5% in the second round of sampling, and 10% in the third round of sampling. However, FA firms will be required to maintain a register of all such representatives who only provide FA services in relation to investment products such as DCIs, ELNs or CLSIs for a period of not less than five years.

8.14.7 MAS is of the view that any Category 1 infraction detected in the first round of sampling would be an indicator that the representative may have committed more cases of infractions. As such, this would warrant additional rounds of checks to be conducted. In addition, given that a representative who is assigned a BSC grade "E" may still be entitled to a small percentage (not more than 25%) of his specified variable income, additional rounds of sampling could allow the FA firm to determine the exact percentage of specified variable income that the representative should be entitled to within that range.

8.15 Infractions uncovered from Mystery Shopping Exercises

8.15.1 One respondent sought clarification on when an infraction arising from a mystery shopping exercise would affect a representative's variable income. Other respondents suggested that mystery shopping exercises not be used as a punitive tool under the BSC framework.

MAS' Response

8.15.2 MAS would like to clarify that infractions arising from mystery shopping exercises will affect the representative's variable income in the calendar quarter in which the review and assessment is completed. Mystery shopping exercises serve as an effective tool in assessing the behaviour of representatives when dealing with clients and cannot be replaced with offsite documentation reviews. As such, MAS disagrees with the proposal to remove mystery shopping exercises as an assessment method under the BSC framework.

8.16 Infractions uncovered from Substantiated Complaints

8.16.1 One respondent sought clarification on when an infraction arising from a substantiated complaint would affect a representative's variable income. Another respondent asked whether FA firms have the discretion to decide when the assessment of a complaint will be finalised.

8.16.2 Some respondents expressed concerns that it is inequitable for the representative's variable income to be affected by a substantiated complaint in the calendar quarter when the customer complaint is substantiated (the present calendar quarter) rather than the calendar quarter when the incident which led to the complaint had occurred (the past calendar quarter). This is

because the representative's variable income in the present calendar quarter may have grown to be significantly higher than his variable income in the past calendar quarter.

8.16.3 Some respondents proposed that MAS put in place an incontestability period of five years for client complaints whereby client complaints will not impact a representative's BSC grade if the complaint is lodged more than five years after the incident, which gave rise to the complaint, took place.

MAS' Response

8.16.4 MAS would like to clarify that infractions arising from substantiated complaints will affect the representative's variable income in the calendar quarter in which the complaint is substantiated. While MAS will not be stipulating a timeline for FA firms to complete their review and assessment of complaints under the BSC framework, FA firms are expected to comply with the proposed Financial Advisers (Complaints Handling and Resolution) Regulations 2013.

8.16.5 We note the concerns raised by the industry that it is inequitable for substantiated complaints to affect the representative's variable income in the present calendar quarter, especially if the size of the representative's portfolio has grown substantially over time. However, MAS is of the view that requiring FA firms to reassign BSC grades and re-compute monies which representatives are not entitled to based on variable income in the past calendar quarter may be operationally challenging as FA firms will have to retain records of all past transactions on a perpetual basis. Instead, MAS has discussed and agreed with the industry to allow FA firms to apply a haircut on the amount of variable income which the representative is not entitled to, that is attributable to infractions arising from substantiated complaints if the representative's past variable income is lower than his present variable income. For example, a representative found to have one case of Category 1 infraction arising from a substantiated complaint and two cases of Category 2 infractions arising from post-transaction checks is determined not to be entitled to S$18,000 of his variable income (S$6,000 attributable to infractions arising from the substantiated complaint and S$12,000 attributable to infractions arising from post-transaction checks). If the representative's past variable income is half of his present variable income, the FA firm may apply a haircut of 50% on the amount of non-entitlement attributable to infractions arising from the substantiated complaint. As such, the representative will not

be entitled to S$15,000 of his variable income (S$3,000 attributable to infractions arising from the substantiated complaint and S$12,000 attributable to infractions arising from post-transaction checks).

8.16.6 MAS disagrees that an incontestability period should be imposed on client complaints. This is in line with current practice, where disciplinary action will be taken against a representative as long as a complaint is substantiated, regardless of when the complaint is reported or substantiated. In addition, as the requirements under the BSC framework will only apply to substantiated complaints in relation to incidents which occur from the date the legislative requirements for the BSC framework take effect, sufficient time would have been given to representatives to ensure that they conduct themselves in a proper manner.

8.17 Category 1 Infractions

8.17.1 A Category 1 infraction refers to an infraction that has a material impact on the interest of a client or impinges on the fitness and propriety of the representative. MAS proposed to consider the situation where a representative recommends that a client switches from one investment product to another investment product as a Category 1 infraction, if the switching is unnecessary and wholly or partly for the representative's benefit. One respondent sought clarification on whether such switching transactions would have to be in relation to designated investment products in accordance with the Notice on Recommendation on Investment Products (FAA-N16). Three respondents were of the view that MAS should specify a time frame between the disposal and acquisition of investment products to allow FA firms to identify a switching transaction. Another respondent proposed to exclude situations where the unnecessary switching activity is done partly for the representative's benefit.

8.17.2 MAS also proposed to consider a situation where the representative, in relation to the provision of FA services, fails to execute the client's instructions without valid cause and the representative's failure to do so results in the client incurring losses as a Category 1 infraction. One respondent sought clarification on whether FA firms are allowed to reclassify such an infraction as a Category 2 infraction if the FA firm compensates the client such that there is no material impact on the interests of the client. Two

respondents proposed to consider only infractions resulting in significant losses to the client as Category 1 infractions.

MAS' Response

8.17.3 In accordance with FAA-N16, switching transactions will be restricted to designated investment products i.e. life policies and CIS. MAS does not consider it appropriate to specify a time frame between the disposal and acquisition of designated investment products given the diverse nature and characteristics of such products. In addition, unnecessary switching is not contingent upon the length of time in which an investment product is held; rather it should be based on whether the switch is considered to be unnecessary and detrimental to the client's interest. MAS also does not agree with the suggestion to exclude unnecessary switching activity done partly for the representative's benefit. All switching which is unnecessary and detrimental to the interest of the client should be considered as a Category 1 infraction.

8.17.4 MAS would like to clarify that FA firms should not take into account subsequent rectification measures performed, including compensation provided to the client, in assessing the impact of the infraction on clients' interests. MAS agrees that only situations where the failure to execute the client's instructions results in the client incurring material losses will be classified as a Category 1 infraction. In determining the materiality of the losses, FA firms should take into account the personal financial situation and circumstances of the client.

8.18 Category 2 Infractions

8.18.1 Several respondents have requested MAS to provide further guidance on what would constitute a Category 2 infraction (i.e. any infraction which is not classified as a Category 1 infraction) or examples of Category 2 infractions.

MAS' Response

8.18.2 We note the industry's request and will be working with the industry associations on a list of examples of Category 2 infractions to be incorporated into the BSC Guidelines.

8.19 Classification of Infractions and Annex 3 of draft BSC Guidelines on Examples of Category 1 Infractions

8.19.1 MAS proposed not to require the ISA unit to consider minor lapses or administrative oversights in relation to a sampled transaction, a finding from a mystery shopping exercise or a complaint, which do not affect clients' interest, as infractions. One respondent requested MAS to provide examples on minor lapses and administrative oversights which can be disregarded as infractions.

8.19.2 MAS also proposed to consider a situation where a representative recommends a client to purchase an investment product using his Central Provident Fund (CPF) monies but failed to inform the client of the current interest rates payable under the CPF Ordinary Account and Special Account, and the minimum interest rate guaranteed under the CPF Act (Cap. 36), as a Category 1 infraction. This is because the client might not have bought the investment product if he had known that the potential returns from the investment product may be lower than the interest rates he would earn under his CPF account. One respondent commented that the failure to disclose the interest rates payable under the CPF Ordinary Account and Special Account should be deemed as a minor infraction given that such rates are published by the CPF and are commonly known to investors.

MAS' Response

8.19.3 MAS recognises that it is important for FA firms to be able to clearly distinguish what can or cannot be regarded as an infraction. As such, we will amend the BSC Notice to provide the circumstances under which minor lapses or administrative oversights can be disregarded as an infraction. Notwithstanding that, MAS would like to highlight that it is undesirable for FA representatives to have many minor lapses or administrative oversights, and the ISA unit should assess the fitness and propriety of such representatives.

8.19.4 On the non-disclosure of CPF interest rates, MAS would like to clarify that where the disclosure of interest rates payable under the CPF Ordinary Account and Special Account is material to the decision making of a client, any failure to disclose such information to the client will be considered as a Category 1 infraction.

8.20 Rectification of Infractions arising from Post-Transaction Checks

8.20.1 MAS proposed to require FA firms to rectify all infractions uncovered by the ISA unit. Some respondents sought clarification on whether FA firms have the flexibility to determine the type of rectification measures to be performed, including not taking any rectification action based on the facts and circumstances of the infraction.

MAS' Response

8.20.2 FA firms can decide on the type of rectification measures to take, including no action, for all infractions uncovered by the ISA unit. FA firms must, however, ensure that such decisions are properly justified and documented.

8.21 Grading Table for Supervisors

8.21.1 MAS proposed the following grading table for supervisors:

BSC grade for a supervisor for a calendar quarter	Percentage of total specified variable income[1] from all representatives under his supervision that a supervisor is entitled to in a calendar quarter
A	100%
B	75% to less than 100%
C	50% to less than 75%
D	25% to less than 50%
E	0% to less than 25%

[1] Percentage of total specified variable income = (Sum of specified variable income which a supervisor is entitled to in a calendar quarter under the BSC framework, in respect of every representative under his supervision or management) / (Sum of specified variable income of the supervisor in the same calendar quarter which is subject to the BSC framework, in respect of every representative under his supervision or management) x 100%

8.21.2 One respondent commented that the current BSC grading for supervisors is too onerous as in order for a supervisor to be assigned a BSC grade "A", every representative under him must attain a BSC grade "A". Another respondent commented that the supervisor's grading table penalise supervisors with a smaller span of control given that a supervisor who supervises a small number of representatives is more likely to be graded "E" if the supervisor has one representative graded "E" (E representative) under him, as compared to another supervisor who also has one E representative under him but supervises a larger number of representatives. As such, the respondent suggested using a fixed number of E representatives under the supervisor as a criterion to determine whether the supervisor should be assigned a BSC grade "E". In addition, respondents expressed concerns on whether there are penalties for supervisors who are assigned BSC grades from "B" to "D".

MAS' Response

8.21.3 MAS notes the feedback that it may be difficult for supervisors to achieve a BSC grade "A", and will revise the supervisor's grading table into the following four categories – 75% to 100% entitlement (Good); 50% to less than 75% (Satisfactory); 25% to less than 50% (Fair) and 0% to less than 25% (Unsatisfactory). We will not be prescribing the penalties for supervisors who are assigned BSC grades "Satisfactory" and "Fair" (formerly BSC grades "B" to "D"), and will allow flexibility for FA firms to determine the appropriate course of action for these supervisors. The revised supervisor's grading table is set out below.

Percentage of total specified variable income[1] from all representatives under his supervision that a supervisor is entitled to in a calendar quarter	BSC grade for a supervisor for a calendar quarter
75% to 100%	Good
50% to less than 75%	Satisfactory
25% to less than 50%	Fair
0% to less than 25%	Unsatisfactory

[1] Percentage of total specified variable income =

$$\frac{\text{(Sum of specified variable income which a supervisor is entitled to in a calendar quarter under the BSC framework, in respect of every representative under his supervision or management)}}{\text{(Sum of specified variable income of the supervisor in the same calendar quarter which is subject to the BSC framework, in respect of every representative under his supervision or management)}} \times 100\%$$

8.21.4 MAS disagrees with the observation that the current grading methodology penalises a supervisor with a smaller span of control. This is only true if the E representative makes a significant contribution to the variable income of his supervisor. We are also of the view that setting a fixed number of E representatives under the supervisor as a criterion to determine whether the supervisor should be assigned BSC grade "Unsatisfactory" (formerly BSC grade "E") will unfairly penalise supervisors with a higher span of control as they will accordingly have a higher possibility of having more E representatives.

8.21.5 As supervisors are typically remunerated based on a percentage of their representatives' sales performance, the current grading methodology works on the principle that a supervisor's entitlement under the BSC framework is calculated based on the BSC performance of all the representatives under the supervisors, weighted according to the amount of remuneration derived from each representative. Accordingly, the methodology is fair as the BSC grade of a representative who contributes more to his supervisor's remuneration should have a greater weightage in the evaluation of his supervisor's BSC grade. As an example, if Team 1 comprises a supervisor with two representatives who make equal contributions to the variable income of their supervisor and they are assigned BSC grades of "A" and "E" respectively, and Team 2 comprises a supervisor with 10 representatives who also make equal contributions to the variable income of their supervisor and there are 9 representatives assigned BSC grades of "A" and 1 representative assigned a "E" grade, it is reasonable to expect the E representative's grade to have a greater impact on the BSC

grade of Team 1's supervisor than Team 2's supervisor. Conversely, if Team 1's E representative only contributes to 10% of the variable income of his supervisor, the impact of both E representatives' BSC grades on their supervisors in both teams is expected to be similarly limited.

8.22 Assignment of BSC Grades to Supervisors

8.22.1 With respect to the assignment of BSC grades to supervisors, one respondent sought clarification on whether supervisors who do not earn variable income tied to the sales performance of representatives should be assigned BSC grades. Another respondent requested clarification on how individuals acting as both a representative and a supervisor, should be assessed.

MAS' Response

8.22.2 Supervisors who do not earn any variable income will not be assigned any BSC grade. Notwithstanding that, FA firms are expected to monitor the supervisor's performance against how well representatives under his supervision perform in relation to the non-sales KPIs and factor such assessments into the supervisor's appraisal, including remuneration and promotion reviews. We will allow flexibility for FA firms to decide on the appropriate method for factoring representatives' performance into the assessment of their supervisor. MAS will also require individuals with dual responsibilities to be assigned two separate BSC grades, one for his role as a supervisor and the other for his role as a representative.

8.23 Recovery of Non-Entitlement of BSC Monies from Representatives and Supervisors

8.23.1 MAS proposed that FA firms recover the specified variable income which representatives and supervisors are not entitled to in a calendar quarter, by no later than the end of the immediately subsequent calendar quarter.

8.23.2 Several respondents proposed for FA firms to be allowed to recover monies which representatives and supervisors are not entitled to (non-entitlement), by no later than the end of two quarters after the transactions are concluded rather than the end of the immediate preceding quarter.

8.23.3 Some respondents commented that as complaints may be received by FA firms only years after the transactions have closed and considerable time is required to investigate any complaint, the recovery of monies should be carried out only in the period the complaint is substantiated.

8.23.4 A few respondents requested flexibility in deciding the manner in calculating the non-entitlement arising from complaints, such as the amount of non-entitlement and timing of recovery.

8.23.5 One respondent suggested not recovering the non-entitlement from representatives and supervisors who have left the FA firm while another respondent sought clarification whether the FA firm will be in breach of any legislation if the FA firm is unable to recover monies from a representative who has become bankrupt.

MAS' Response

8.23.6 MAS agrees that it is appropriate to extend the timeline for recovery of non-entitlement to no later than the end of two subsequent calendar quarters after the measurement quarter, and will revise the requirement accordingly.

8.23.7 With regard to infractions arising from complaints, MAS would like to clarify that it is our intent for such infractions to be factored into a representative's BSC grade in the calendar quarter in which the complaint is substantiated.

8.23.8 For consistency across the FA industry, all FA firms should calculate the entitlements for representatives and supervisors in accordance with the BSC methodology prescribed, and not based on any manner an FA firm deems appropriate.

8.23.9 MAS recognises that it may not be practicable for FA firms to recover monies from representatives or supervisors who have left the FA firm. We would like to clarify that FA firms will not be in breach of the BSC rules if they are unable to recover monies from representatives or supervisors under such circumstances as long as the firms can show that they have taken reasonable steps to recover the monies or have a reasonable basis for not doing so.

8.24 Avenue for Appeal by Representatives and Supervisors

8.24.1 In respect of the proposal for FA firms to put in place a process for addressing appeals made by representatives or supervisors in relation to the BSC framework, one respondent requested MAS to provide guidance on addressing such appeals.

MAS' Response

8.24.2 MAS will leave it to FA firms to put in place an appropriate appeal process for the BSC framework. This is consistent with the current practice for FA firms to put in place an internal process to address appeals by their representatives for disciplinary actions taken against them for any misconduct committed.

8.25 Treatment of E Representatives

8.25.1 MAS proposed that FA firms place every E representative under close supervision. This includes placing the E representative under the supervision of a supervisor who has been assigned a BSC grade "A" in the preceding two consecutive calendar quarters, and having the supervisor accompany the E representative during the advisory and sales process for a minimum period of three months.

8.25.2 Many respondents expressed concerns about the practical difficulties in implementing this rule. They commented that a supervisor graded "Good" (formerly BSC Grade "A") from another team will not be willing to take over the supervision of the E representative as this may potentially pull down the supervisor's own grading. Respondents proposed having the supervisor of the E representative accompany the E representative during the advisory and sales process instead, given that it is more appropriate for the supervisor to improve the performance of his own representatives rather than those from other teams.

8.25.3 A few respondents felt that the requirement to accompany E representatives for a minimum period of three months would be too onerous for supervisors. One respondent proposed for FA firms to place the E representative under a training programme for three months in lieu of having

the supervisor accompany the E representative for all advisory and sales activities. Another respondent suggested requiring the supervisor to accompany the E representative for three closed sales only, to align with the industry practice where supervisors are required to accompany new representatives for their first three closed sales.

MAS' Response

8.25.4 MAS has considered the feedback and agrees that placing the E representative under the supervision of a supervisor graded "Good" may not be operationally feasible. We will remove this requirement in the BSC Guidelines and allow the E representative to continue to be under the supervision of his existing direct supervisor. Notwithstanding that, if the direct supervisor of the E representative has been graded "Unsatisfactory" in the same calendar quarter as the E representative, his supervisory role should be performed by another supervisor in a higher tier who has not been graded "Unsatisfactory" in the same calendar quarter. If every supervisor in a higher tier is graded "Unsatisfactory" or there are no supervisors in a higher tier, the FA firm would have to designate a person who is independent and suitably qualified to perform the supervisory role. In addition, the FA firm will have to submit a remedial plan to MAS on the steps it intends to take to improve the performance of the relevant team comprising the E representative and supervisor(s) assigned BSC grade(s) of "Unsatisfactory".

8.25.5 MAS notes the feedback that the current requirement of a supervisor accompanying an E representative for three months could be too onerous given that the volume of transactions conducted by the E representative could be very high in a calendar quarter. In view that the ISA unit is also required to conduct full-scale post-transaction checks on such E representatives, MAS agrees to reduce the intensity of the close supervision measures carried out by supervisors. We will require supervisors to accompany the E representative for a minimum of five closed sales instead of three months.

8.26 Treatment of Supervisors who are Assigned a BSC Grade of "Unsatisfactory" (Formerly BSC Grade "E")

8.26.1 For a supervisor who has been assigned a BSC grade of "Unsatisfactory", MAS proposed that the FA firm conduct a review to ascertain whether his oversight of the representatives under his supervision or

management is adequate, and if necessary, reduce the number of representatives under his supervision or management.

8.26.2 One respondent sought clarification on whether the reduction of representatives under a supervisor who is assigned a BSC grade of "Unsatisfactory" is a minimum standard for compliance or an example of a measure that may be undertaken by the FA firm. If this measure is an example of a range of measures that the FA firm may adopt, the respondent suggested that MAS provide more examples of measures which the FA firm may adopt to address the issue of inadequate oversight by supervisors, such as imposing a moratorium on the recruitment of new representatives by the supervisor.

MAS' Response

8.26.3 MAS would like to clarify that the proposed measure to reduce the number of representatives under a supervisor graded "Unsatisfactory" is an example of a measure that may be undertaken by the FA firm. We will revise the BSC Guidelines to include the example of imposing a moratorium on the recruitment of new representatives as another proposed measure that FA firms can take against supervisors graded "Unsatisfactory".

8.27 Reference Checks on Representatives by FA Firms

8.27.1 MAS proposed that an FA firm conducts reference check on an individual whom it intends to recruit as a representative or supervisor and who had previously been a representative or supervisor for another FA firm. This could be done by requesting from the previous principal, the BSC grades which were assigned to the individual in the final 4 calendar quarters of his tenure with his previous principal.

8.27.2 Two respondents sought clarification on whether the existing reference check forms used by FA firms could be amended to incorporate the requirements on reference checks under the BSC framework or whether FA firms are required to operationalise these requirements separately.

8.27.3 One respondent felt that if a representative had been employed by more than one principal in his previous four calendar quarters, it would suffice to conduct reference checks with the representative's latest principal only. A few respondents asked whether FA firms are expected to conduct reference

checks if a representative had left the FA industry for more than a year to engage in other non-FA activities and subsequently returns to the FA industry. Another respondent also sought clarification on whether the close supervisory measures set out in the BSC Guidelines for E representatives and selected representatives would apply if the representatives' last employment did not involve the provision of FA services.

MAS' Response

8.27.4 MAS will work with the respective industry associations to revise the existing reference check forms to incorporate the requirements under the BSC framework.

8.27.5 As FA firms are currently required to conduct fit and proper checks on the representatives for the last 10 years, MAS is of the view that FA firms should likewise ask for the last four BSC grades assigned to the individual by his previous principal(s) within the past 10 years, regardless of the number of principals the individual had been employed with. If the representative's last employment did not involve the provision of FA services, the FA firm will not be expected to apply the measures for E representatives or selected representatives on such a representative. Notwithstanding that, FA firms are strongly encouraged to apply these measures on individuals with poor records even if their last employment did not involve the provision of FA services.

8.28 Recruitment of E Representatives

8.28.1 Where an FA firm intends to recruit a representative with a BSC grade "E" in the final 4 calendar quarters of his tenure with his previous principal, MAS proposed that the FA firm apply the close supervision measures on such a representative. Two respondents asked whether the requirements on close supervision for an E representative are applicable if the representative joins a new principal which does not deal with retail clients.

MAS' Response

8.28.2 The BSC requirements only apply to representatives who deal with retail clients. Where an E representative subsequently changes his role and restricts his clientele to non-retail clients only, the BSC requirements will no longer be applicable to the said representative, regardless whether he joins a new principal.

8.29 Record Keeping Requirements

8.29.1 One respondent asked whether the record keeping requirements stated in paragraph 7.1 of the draft BSC Notice are applicable to the pre-transaction checks under the draft BSC Guidelines.

MAS' Response

8.29.2 All FA firms are expected to keep records of every assessment and determination made for pre-transaction checks under the BSC framework for a period of not less than five years. We will set out this expectation in the BSC Guidelines.

8.30 Composition of the ISA Unit

8.30.1 MAS proposed to allow FA firms to outsource the responsibilities of the ISA unit to third party providers if the third party providers are able to satisfy the requirements imposed on the ISA unit.

8.30.2 One respondent suggested that MAS provide a panel or list of qualified companies which FA firms may choose to outsource the responsibilities of the ISA unit to. In addition, the respondent asked whether the third party provider will be required to perform both documentation reviews and client surveys.

MAS' Response

8.30.3 FA firms are better placed to source for appropriate third party providers to carry out the responsibilities of the ISA unit. Notwithstanding that, FA firms are expected to assess and ascertain that the outsourced provider can effectively perform the function of the ISA unit.

8.30.4 FA firms can outsource any or all of the activities to be performed by the ISA unit. For the same sampled transaction, both documentation reviews and client surveys must be conducted. However, FA firms have the discretion to decide whether they would like the third party provider to conduct either or both documentation reviews and client surveys.

8.31 Reporting Requirements for the ISA Unit

8.31.1 MAS proposed to require the ISA unit to report directly to the board of directors and CEO of the FA firm. In addition, the ISA unit is required to submit reports on its audit of the quality of FA services provided by representatives in a given calendar quarter, directly to the board of directors and CEO by the end of the immediately subsequent calendar quarter.

8.31.2 One respondent expressed concern that a direct reporting line from the ISA unit to the board of directors and CEO of the FA firm may not be a tenable corporate structure to put in place. Several respondents suggested for MAS to allow the ISA unit to report to a function or unit which is independent from the FA services unit of the FA firm, such as the risk management or compliance function of the FA firm. Some respondents sought clarification on whether there would be any independence issue if the ISA unit resides within the FA services unit or reports to the same business head as the FA services unit, taking into consideration mitigating measures in place for the ISA unit to submit BSC reports directly to the board of directors and CEO. One respondent suggested for the board of directors and CEO of the FA firm to be given the flexibility to delegate the receipt of BSC reports to an appointed person from an independent control department and in turn, to allow the appointed person to delegate the receipt of reports to another person. Another respondent asked if it is acceptable for the ISA unit to have dual reporting lines where it reports to both the Compliance unit and the Head of Consumer Banking.

8.31.3 Several respondents requested MAS to extend the timeline for the ISA unit to submit the BSC reports to the board of directors and CEO as more time is needed for the ISA unit to address appeals made by representatives and supervisors.

MAS' Response

8.31.4 MAS agrees to allow the ISA unit to report to a unit which is independent from the FA services unit, such as the risk management or compliance unit. However, the ISA unit will not be allowed to report to the same business head as the FA services unit given the inherent conflicts of interest as the business head has responsibilities over the advisory and sales

function of the FA firm. If the ISA unit is to reside within the FA services unit of the FA firm or reports to the same business head as the FA services unit, the FA firm must ensure that for matters relating to BSC, the ISA unit reports directly either to the board of directors and CEO, or a unit which is independent from the FA services unit of the FA firm (i.e. the ISA unit must have a dual reporting line for BSC matters). The board of directors and CEO may delegate the receipt of reports to an appointed person from a control department. Notwithstanding that, the board of directors and CEO remain ultimately responsible for monitoring the operations of the BSC framework and measuring the FA firm's achievement of fair dealing outcomes.

8.31.5 Taking into consideration the industry's feedback on the tight reporting timeline, MAS will extend the timeline for submission of BSC reports to the board of directors and CEO by one calendar quarter. As such, the ISA unit will be required to submit reports in a given calendar quarter, directly to the board of directors and CEO by the end of two immediately subsequent calendar quarters.

8.32 Timeline for Submission of BSC Reports to MAS

8.32.1 A few respondents commented that the current proposed deadline of 14 days after the end of every measurement quarter for submission of BSC reports to MAS is too tight, and proposed for the deadline to be extended to the end of the quarter after the assessment quarter.

MAS' Response

8.32.2 MAS notes the industry's feedback and will extend the submission of BSC reports to MAS to the end of two calendar quarters subsequent to the measurement quarter. We would like to highlight that appeals may continue after the end of the reporting deadline and FA firms should refund the BSC monies recovered from the representatives should their appeals be successful. However, FA firms should strive to finalise the BSC grading early to provide more certainty to representatives in managing their cash flow.

8.33 Information to be Submitted in the BSC Reports

8.33.1 A number of respondents sought clarification on whether the quarterly submissions on BSC statistics to MAS should include grades which have not been concluded as they are subject to appeals by representatives and

supervisors. One respondent suggested that revising the reporting template to allow for such adjustments.

8.33.2 Another respondent commented that it is tedious to provide the description of each infraction for every representative.

MAS' Response

8.33.3 MAS would like to clarify that the BSC reports should include grades that are subject to appeal. We have considered that the number of successful appeals should not be high given that all infractions must have been substantiated. Further, as MAS will be extending the timeline for submission of reports by another quarter i.e. FA firms have two quarters to finalise all BSC grades, we are of the view that FA firms should have sufficient time to conclude all appeal cases before submission of the reports. Notwithstanding that, we will be making changes to the BSC reporting templates in Annex 2 of the BSC Notice to take on board feedback from the industry.

8.33.4 MAS notes the comment that it may be tedious to provide the description of every infraction and will limit the requirement to infractions committed by E representatives only.

8.34 Pre-transaction Checks by Supervisors

8.34.1 MAS proposed that FA firms require their supervisors to conduct pre-transaction checks including documentation reviews on all recommendations made by representatives and client call-backs with selected clients and clients of selected representatives. Several respondents sought clarification on whether it is necessary for the supervisor to conduct pre-transaction call-backs to the same client if the supervisor was present during the advisory and sales process. Some respondents asked whether pre-transaction checks will need to be performed for transactions effected by a supervisor in his capacity as a representative if he is not under the supervision of any other person (i.e. a supervisor in the highest tier). A few respondents suggested that MAS remove the requirement for pre-transaction checks to be performed on rollover transactions pertaining to investment products such as DCIs, ELNs and CLSIs.

8.34.2 MAS has also proposed to allow FA firms to complete the pre-transaction checks within five calendar days from the date on which the

transactions are effected for recommendations made in relation to a specified list of investment products which are time-sensitive and do not have free-look or cancellation periods. Many respondents suggested allowing supervisors to complete the pre-transaction checks within five "business days" instead of five "calendar days" for transactions involving time-sensitive products. The respondents also proposed allowing FA firms to define their own list of time-sensitive products.

MAS' Response

8.34.3 MAS agrees that supervisors need not conduct the pre-transaction call-backs to clients if the supervisor was present during the advisory meeting between the representative and his client.

8.34.4 MAS agrees that there is no need to perform pre-transaction checks on transactions effected by a supervisor in the highest tier as such a supervisor is expected to be competent in performing his advisory and sales role. Notwithstanding that, post-transaction checks by the ISA unit will still have to be conducted on transactions effected by such supervisors. Taking into account revisions to post-transaction checks performed on rollover transactions pertaining to investment products such as DCIs, ELNs and CLSIs as set out in paragraph 8.10.6, MAS agrees to remove the requirement to conduct pre-transaction checks for such rollover transactions.

8.34.5 MAS also agrees with the suggestions relating to transactions for time-sensitive products. We will revise the BSC Guidelines to allow FA firms to define their list of time-sensitive products and to allow the completion of pre-transaction checks for such products within five business days.

8.35 Applicability of Annex 1 "Guidance for Documentation Review" and Annex 2 "Guidance for Client Surveys" of the draft BSC Guidelines to Pre-transaction Checks

8.35.1 Currently, MAS does not provide guidance for pre-transaction checks to be conducted by supervisors. One respondent asked whether MAS expects FA firms to similarly use the guidance for documentation reviews and client surveys prescribed for the conduct of post-transaction checks, set out in Annexes 1 and 2 of the draft BSC Guidelines, for the conduct of pre-transaction checks by supervisors or will supervisors have the discretion to determine the scope of the pre-transaction checks.

MAS' Response

8.35.2 Pre-transaction checks by supervisors are meant to help minimise the impact of the BSC framework on representatives as any infractions uncovered by supervisors during this stage will not be factored into the BSC framework and will not affect the remuneration of the representatives as well as that of their supervisors. As such, we will leave it to the FA firms to determine and put in place the appropriate processes for the conduct of pre-transaction checks by supervisors. If applicable, FA firms can use the guidance set out in Annexes 1 and 2 of the draft BSC Guidelines for the pre-transaction checks.

8.36 Rectifications of Infractions Arising from Pre-transaction Checks

8.36.1 MAS proposed that FA firms ensure that infractions uncovered during the pre-transaction checks are rectified by the representatives concerned. Two respondents commented that the current drafting on rectification of infractions imply that any rectification actions can only be conducted by the representative involved. Given that the representative may not be in the best position to rectify an infraction, the respondents sought clarification on whether the rectification could be performed by another representative or by a supervisor.

MAS' Response

8.36.2 MAS agrees that rectification measures should be performed by persons deemed appropriate by the FA firm and will amend the BSC Guidelines to reflect this position.

8.37 Frequently Asked Questions on BSC Framework

8.37.1 A few respondents asked if MAS will be providing a list of Frequently Asked Questions (FAQs) given the complexity of the BSC framework.

MAS' Response

8.37.2 MAS has held extensive discussions on the elements of the BSC framework with the relevant industry associations, and conducted industry briefings for all FA firms.

8.37.3 Given that the BSC framework is new to the industry, we will issue a list of FAQs on the operational requirements of the BSC framework to supplement the information set out in the BSC Notice and Guidelines.

8.38 Managing Client's Expectations

8.38.1 One respondent proposed for MAS to work with the industry associations on communication measures to manage clients' expectations, when they are contacted by supervisors or the ISA unit for pre-transaction or post-transaction checks.

MAS' Response

8.38.2 We note that the Association of Banks in Singapore, the Life Insurance Association Singapore (LIA) and the Association of Financial Advisers had issued a joint press release on 16 April 2015 to seek the cooperation of consumers in providing feedback on their purchase of investment products. MAS will also explore ways to encourage consumers to participate in the client surveys and client call-backs conducted by FA firms.

8.39 Implementation Timeline

8.39.1 A number of respondents expressed concerns that they may not have sufficient time to put in place systems and processes to comply with the BSC requirements.

MAS' Response

8.39.2 MAS has provided the industry with a one year grace period in 2015 to familiarise itself with the framework before legislating the requirements in January 2016. During this one-year transitional period, where FA firms are required to implement the BSC framework and inform their representatives and supervisors of their performance under the framework, no deductions will be made for any infractions uncovered.

9 Promoting a Culture of Fair Dealing − Banning of Product-Related Incentives for FA Firms, Representatives and Supervisors

9.1 Applicability of the Ban

9.1.1 MAS proposed to ban short-term product-related incentives that reward FA firms, representatives and supervisors for recommending specific investment products or a specific class of investment products as such incentives may encourage poor market conduct practices such as product pushing and improper switching. The ban will not apply to incentives provided or received in relation to the provision of any FA service to any client who is an AI, II or expert investor (EI).

9.1.2 Some respondents sought clarification on whether the ban would apply to incentives provided in relation to the provision of FA services to HNWIs.

MAS' Response

9.1.3 The primary objective of the ban is consistent with section 27 of the FAA, which requires FA firms and their representatives to have a reasonable basis for recommending any investment product to a client.

9.1.4 In this regard, the ban will not apply to incentives provided or received in respect of the provision of FA services by specialised units under section 100(2) of the FAA which are exempt from section 27 of the FAA.

10 Lowering Distribution Costs by Enhancing Market Efficiency − Facilitating Comparison of Life Insurance Products and Cheaper Access to Life Insurance Products

10.1 Information Required for the Web Aggregator

10.1.1 MAS received industry feedback from the insurers that the proposed sections 34(5) and (8) of the draft Insurance (Amendment) Bill 2015 (IA Bill) were onerous. Respondents requested MAS to clarify how the words "neglect", "does not use due care", "persistently", "inaccurate information" or "false or misleading in a material particular" would be interpreted. One

respondent commented that insurers should not be held liable for errors in the information published on the web aggregator if the errors are due to system issues, which are beyond the insurers' control. One respondent asked what recourse would be available to consumers and insurers, if such errors were to occur.

10.1.2 One respondent provided feedback that insurers should be given sufficient lead time before an insurer is deemed to have failed or neglected to have furnished the information required for the web aggregator.

MAS' Response

10.1.3 Following the consultation, MAS has amended the relevant offence creating provisions in the IA Bill. An insurer will be guilty of an offence and shall be liable on conviction if it:

(a) fails to comply with the requirements to provide information for the purposes of the web aggregator;

(b) provides information (for the web aggregator) that is false or misleading in a material particular; or

(c) fails to take reasonable care to provide information (for the web aggregator) that is accurate.

The provisions are similar in nature to other pre-existing offences under the Insurance Act (IA) relating to the provision of information and are necessary to ensure the veracity of information submitted for publication on the web aggregator.

10.1.4 One indicator that MAS will consider to gauge the materiality of the error would be to assess the extent to which the error could have affected the decision of a user in choosing a suitable life insurance product. An example where the information would be considered by MAS to be false or misleading in a material way is if the annual premiums submitted for publication on the web aggregator for Product X was $250, but the actual annual premium is in fact $2,500. Another example would be if Product Y was presented on the web aggregator as though a certain benefit is already included in the premiums published, but the premiums actually exclude the benefit.

10.1.5 MAS agrees that insurers should not be held responsible for errors which are not in any way caused by the insurer. In the event such an error has occurred, MAS will carry out a proper investigation to determine the cause of the error. MAS has legal rights under the contractual agreement with its third party service providers to take appropriate action to rectify and remedy issues if they arise.

10.1.6 Insurers have a time frame of up to seven working days after the actual launch date of a product to submit and verify the accuracy of the information furnished for publication on the web aggregator. Based on feedback received from insurers who are participating in the web aggregator, this should be adequate for insurers to submit and test the veracity of the information. Going forward, insurers should consider the information required for publication on the web aggregator as part and parcel of their product launch preparation process, where applicable. MAS will continue to review the time provided to insurers to submit and verify information for the web aggregator.

10.2 Fees Chargeable in Relation to the Web Aggregator

10.2.1 A number of respondents commented that the basis of the fees to be imposed on life insurers in relation to the web aggregator should be set out clearly in the IA Bill. Some respondents suggested for the fees to be prescribed based on the number of products that are offered by the life insurers instead of the type of licence held by the life insurers.

10.2.2 MAS also received feedback that it is not reasonable that fees prescribed do not necessarily bear any relationship to the cost of services provided by MAS in relation to the web aggregator.

10.2.3 One respondent queried whether the fees payable by the life insurers pertain to both the operation and use of the web aggregator. In addition, the respondent queried if the fees payable would include further costs incurred relating to enhancements made to the web aggregator in future.

MAS' Response

10.2.4 The amendments to the IA Bill are empowering provisions to vest MAS with powers to effect the web aggregator initiative. Details relating to the basis and methodology for imposing fees in relation to the web aggregator will

be set out clearly in the Regulations to be issued under the IA. MAS will consult on the new draft Regulations pertaining to the web aggregator fees later in 2015. MAS is currently working closely with the LIA on the appropriate basis and methodology for prescribing the fees.

10.2.5 Fees payable for the web aggregator pertain to the operation, maintenance and use of the web aggregator. The fees payable will also include the costs of development of the web aggregator after its launch (i.e. any future changes or enhancements made to the system). The costs incurred for the initial development of the web portal prior to the launch, and the costs incurred prior to the coming into effect of the draft Regulations pertaining to the web aggregator fees, will however not be part of the fees payable.

10.2.6 To address the feedback in paragraph 10.2.2, MAS has amended the IA Bill to clarify that the total fees payable by the insurers, for the specified period, will not exceed the total costs incurred by MAS in relation to the web aggregator for that period.

10.3 Penalty Applicable for Breach of Sections 34 and 35 of the Draft IA Bill

10.3.1 One respondent queried if the industry should be proposing a penalty amount for the proposed new sections 34 and 35 of the draft IA Bill. The respondent further shared the view that the maximum penalty should be in line with maximum penalties for similar offences for furnishing inaccurate information. Another respondent commented that insurers should only be liable for penalties of reasonable amounts.

MAS' Response

10.3.2 MAS has since determined the appropriate maximum penalty amounts for the new provisions in the IA Bill, taking into consideration the maximum penalties applicable to other offences of a similar nature under the IA and the severity of the offence committed. The fees payable in connection with the web aggregator is recoverable by MAS as a judgment debt along with a late payment fee.

10.4 Direct Purchase Insurance Products (DPI)

10.4.1 A few respondents expressed concerns that the requirement for life insurers to manufacture and offer certain policies is worded too broadly, and that insurers could potentially be required to offer policies that breached the insurers' risk appetite and/or risk management considerations. One respondent cited the example that not all insurers would want to offer pure protection policies if it was not aligned with the insurer's long term strategy. The respondent suggested that life insurers should be exempted from the requirement to manufacture and offer such prescribed policies if the offering of such policies breaches the insurer's internal risk tolerance.

10.4.2 MAS also received feedback that insurers holding defined market segment (DMS) licences should be explicitly excluded in the IA from the requirements to manufacture and offer DPI.

MAS' Response

10.4.3 In exercising MAS' powers under the new section on manufacturing and offering certain life policies, MAS will take into account whether it is in the public interest to do so. MAS will also consider the safety and soundness of the insurer and the type of individual life policies it offers. Currently, DMS insurers are not required to manufacture and offer DPI and will thus be excluded from the application of such directions on DPI.

11 Other FAIR-related Amendments

11.1 Powers to Provide for Transitional Arrangements and Specify how Existing Contracts should be Effected

11.1.1 Two respondents requested MAS to provide an example of how existing contracts should be amended in light of the FAIR requirements.

11.1.2 Two respondents also commented that the provision to relieve a party from breach of existing contractual obligations (where such a breach is to comply with FAIR requirements) is unlikely to extend to contracts governed under foreign laws.

MAS' Response

11.1.3 Insurers and FA firms should review their existing contracts and assess whether they contain clauses that are not in compliance with the FAIR requirements. If so, these contracts will need to be amended, renegotiated or terminated to ensure that the firm does not breach its existing contracts when complying with the FAIR requirements. For example, an existing distributorship agreement that stipulates that an insurer shall pay to a distributor 100% specified commissions for the sale of a regular life insurance product in the first year of the life policy will be in conflict with the draft Insurance (Remuneration) Regulations and draft FA (Remuneration and Incentive) Regulations, which require the commissions to be paid out in the first year of a life policy to be capped at 55%. Accordingly, the distributorship agreement will have to be amended to comply with the new requirements set out in the Insurance (Remuneration) Regulations and draft FA (Remuneration and Incentive) Regulations.

11.1.4 MAS has surveyed the industry associations to understand the impact of the FAIR requirements on existing contracts. Based on the survey, we note that insurers and FA firms generally have provisions in their contracts to address the issue of changing laws and regulations. As such, MAS will only be provided with the powers to specify how existing contracts should be affected in respect of the remuneration-related FAIR requirements only, i.e. the BSC framework, SOC requirements, and banning of product incentives.

11.1.5 We further understand from the industry that foreign contracts in relation to remuneration matters are not prevalent. In this respect, we expect insurers and FA firms to assess and take appropriate actions to manage the risk arising from their existing foreign contracts that conflict with the FAIR requirements (if any).

(II) Proposed Legislative Amendments to Authorise Inspections by Foreign Regulatory Authorities (FRAs)

12.1 Definition of FRA

12.1.1 One respondent sought to understand the intent behind the scope of FRA as defined in the new Section 70B of the draft FAA Bill, which is broader

in scope than the definition of "parent supervisory authority" as used in section 45 of the Banking Act (Cap. 19)[6], as it could include other FRAs which are not the parent supervisory authority.

MAS' Response

12.1.2 FA firms may be related to various types of foreign financial groups (e.g. securities or insurance groups), and the reference to 'consolidated supervision' and 'parent supervisory authority' is not as well defined for non-bank financial groups as in the banking context. Hence, we have used a potentially broader term, similar to that in the SFA[7].

12.1.3 The powers of inspection are intended for FRAs to discharge their supervisory functions over FA firms in Singapore in which they have regulatory oversight. This would typically be part of an FRA's supervisory responsibility of the group on a consolidated basis. This is a question of fact that will be assessed when granting approval for such inspections, in accordance with the new section 70C(3) of the FAA Bill.

12.2 Scope of Inspections

12.2.1 One respondent highlighted that there could be instances where the FA services carried out by an FA firm in Singapore may be supported or booked in other offshore branches or related entities. In such instances, an FRA which carries out an inspection on the offshore branch or related entity in the course of its supervision could be led to inspect the books of the FA firm in Singapore. The respondent sought clarification on whether MAS' approval would be required in such instances, and whether the FA firm would be required to inform MAS of such a request.

[6] Section 45 of the Banking Act (Cap. 19) allows the Authority to grant written approval to a "parent supervisory authority" to conduct inspections on any branch or office of a bank incorporated outside Singapore or a foreign-owned bank incorporated in Singapore. "Parent supervisory authority" is defined in section 2(1) of the Banking Act to mean: "(a) in relation to a bank incorporated outside Singapore, the supervisory authority which is responsible, under the laws of the country or territory where the bank or its parent bank is incorporated, formed or established, for supervising the bank or its parent bank, as the case may be; or (b) in relation to a foreign-owned bank incorporated in Singapore, the supervisory authority which has consolidated supervision authority over the bank".

[7] Section 150B(5) of the SFA.

MAS' Response

12.2.2 In the example described above, the FRA would not be required to seek MAS' approval to inspect the books of the FA firm in Singapore if this is in the course of its supervision of the offshore branch or related entity. Notwithstanding that, should an FA firm in Singapore receive a request for its books to be inspected by an FRA as part of an inspection conducted on its offshore branch or related entity, and there are concerns over such a request, the firm may inform MAS.

12.3 Imposition of Safeguards

12.3.1 One respondent requested MAS to define the scope and focus of inspections by FRAs clearly, and to give FA firms sufficient time to prepare for such inspections. The same respondent also requested MAS to ensure sufficient protection against the use and access of client information. Another respondent suggested that the FRA provide a written undertaking to MAS to maintain the confidentiality of any information obtained in the course of the inspection and to comply with any conditions or restrictions which MAS may impose.

MAS' Response

12.3.2 MAS will provide FA firms with reasonable notice and information on the scope of inspections by FRAs. We will also impose relevant conditions or restrictions on FRAs in the conduct of such inspections, including those relating to confidentiality of information, as set out in the new section 70C(5) of the FAA Bill. It is our intent for these conditions or restrictions to be set out via a written undertaking, to be signed by the FRA.

12.4 Disclosure of Inspection Reports

12.4.1 A respondent asked how a person who is provided with an inspection report of a firm produced by an FRA would be deemed to know that the disclosure of the report is in contravention of the confidentiality provision under the new section 70E(1) of the FAA Bill. In particular, the respondent sought MAS' clarification on whether the person is expected to confirm with the firm that such disclosure is permitted or he can assume that if the report is disclosed to him, MAS' approval has been obtained.

MAS' Response

12.4.2 Prior to receiving the inspection report, a person should enquire and ensure that explicit approval by MAS has been given for the disclosure of the inspection report.

12.4.3 A person should report the matter to MAS as soon as possible if he had received an inspection report on the firm which he had not requested; where he was aware that MAS had not given its approval; or did not receive confirmation from the firm or MAS that he could receive the report.

MONETARY AUTHORITY OF SINGAPORE

11 May 2015

Appendix A

List of Respondents to the Consultation Paper on (1) Draft Legislation and Proposed Legislative Amendments to Effect the Policy Proposals under FAIR; and (2) Proposed Legislative Amendments to Authorise Inspections by FRAs under the FAA

1. Aberdeen Asset Management Asia Limited
2. Allen & Gledhill LLP
3. Association of Banks in Singapore (ABS)
4. BNY Mellon Investment Management Singapore Private Limited
5. Financial Alliance Pte Ltd
6. First State Investments (Singapore)
7. FPA Financial Corporation
8. Fullerton Fund Management Company Ltd
9. Grant Thornton Advisory Services Pte Ltd
10. The Hongkong and Shanghai Banking Corporation Limited, Singapore Branch
11. HSBC Insurance (Singapore) Pte. Limited
12. Investment Management Association of Singapore (IMAS)
13. JPMorgan Asset Management (Singapore) Limited
14. KGI Ong Capital Pte. Ltd.
15. Life Insurance Association, Singapore
16. Malayan Banking Berhad, Singapore Branch
17. Maroon Analytics Pte Ltd
18. Mercer (Singapore) Pte. Ltd.

19. Neuberger Berman Singapore Private Limited

20. Pan Group

21. Pana Harrison (Asia) Pte Ltd

22. Professional Investment Advisory Services Pte Ltd.

23. Schroder Investment Management (Singapore) Limited

24. Sumitomo Mitsui Banking Corporation, Singapore Branch

25. S L Tan & Co

26. UOB Kay Hian Private Limited

27. UOB Asset Management Limited

28. Unicorn Financial Solutions Pte Ltd

29. Willis (Singapore) Pte Ltd