

# CONSULTATION PAPER

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## Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act and Financial Advisers Act

MAS

Monetary Authority of Singapore

# **DRAFT REGULATIONS PURSUANT TO THE SECURITIES AND FUTURES ACT AND FINANCIAL ADVISERS ACT**

## **PREFACE**

MAS is consulting on draft Regulations pursuant to the Securities and Futures Act (Cap. 289) [“SFA”] and the Financial Advisers Act (Cap. 110) [“FAA”] as part of ongoing efforts to enhance and refine our regulatory framework.

2 MAS invites interested parties to provide their comments and feedback on the draft Regulations to:

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MAS requests that all comments and feedback be submitted by 4 January 2013.

3 Please note that all submissions received may be made public unless confidentiality is specifically requested for whole or part of the submission.

## **PART I: REGULATIONS PURSUANT TO THE SFA**

### **Amendments to the SF(LCB) Regulations:**

1 MAS proposes amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations [SF(LCB) Regulations], attached at **Annex 1**, to:

- (A) expand the application of certain market conduct provisions;
- (B) strengthen record keeping for internet-based transactions; and
- (C) tighten the exemption from the requirement to hold a capital markets services (CMS) licence for providing fund management services to a “connected person”.

#### **(A) To expand the application of certain market conduct provisions**

2 The SF(LCB) Regulations prescribe the duties of the CEO and Director of a CMS Licence holder in relation to risk management and compliance functions. These include requiring the CEO and Director to ensure effective controls and segregation of duties to mitigate conflicts of interest that may arise from the operations of the CMS licence holder<sup>1</sup>.

3 MAS proposes to impose the prescribed duties, currently set out in Regulation 13 of the SF(LCB) Regulations, on CMS licence holders as well. The proposed amendment takes into account the fact that control failures within the corporate licensee may not always be fully attributable to the Board and CEO, and that the corporate licensee should take collective responsibility (together with its Board and senior management) to ensure proper institution and implementation of risk management and compliance systems. Where applicable, MAS also proposes to extend the requirement of ensuring effective controls and segregation of duties to mitigate conflicts of interest to financial institutions that are exempted from holding a CMS licence, such as licensed banks and finance companies that conduct regulated activities under the SFA.

#### **(B) To strengthen record keeping for internet-based transactions**

4 Financial institutions that deal in securities, trade in futures contract or carry out leveraged foreign exchange trading, are required under the SF(LCB) Regulations upon receiving a customer’s order, to maintain written records of certain information such as the particulars of the customer’s instructions and the date and time of the receipt of the order. Such requirements ensure there are sufficient records to explain a particular transaction.

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<sup>1</sup> Pursuant to Regulation 13 of the SF(LCB) Regulations.

5 To strengthen the level of record keeping where orders are placed over Internet-based trading platforms, MAS proposes to amend Regulation 39(3) of the SF(LCB) Regulations to require that banks, merchant banks, finance companies and Capital Markets Services Licensees that provide Internet-based trading platforms, record and maintain the Internet Protocol address<sup>2</sup> from which orders are received.

6 The recording of such details will help in maintaining a proper audit trail of orders received by the financial institution, and may be useful in resolving issues or disputes concerning orders placed in the customer's accounts. This requirement will serve to protect the interests of the customers and the financial institution.

**(C) To tighten the exemption from the requirement to hold a CMS licence for providing fund management services to a 'connected person'**

7 Under Paragraph 5(1)(c) of the Second Schedule of the SF(LCB) Regulations ["Para 5(1)(c)"], an individual can be exempted from the requirement to hold a CMS licence for providing fund management services to a "connected person". A "connected person" is defined in the SFA as:

- (i) the individual's spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister; or
- (ii) a firm, a limited liability partnership or a corporation in which the individual or any of the persons mentioned in sub-paragraph (i) has control of not less than 20% of the voting power in the firm, limited liability partnership or corporation, whether such control is exercised individually or jointly.

8 The exemption under Para 5(1)(c) is intended for individuals managing funds on behalf of their immediate family members (i.e. persons described in sub-paragraph 7(i) above). However, some persons have used this exemption to conduct fund management services on behalf of non-family members (as long as they hold a less than 80% stake, whether individually or jointly, in a firm or corporation described in sub-paragraph 7(ii) above). This is not in accordance with the intent of the exemption.

9 As the intent of the exemption is for family members only, we propose to refine the definition of "connected person", for the purposes of this exemption, to cover only immediate family members, and firms or corporations which the individual and his immediate family members, whether individually or jointly, have sole control of.

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<sup>2</sup> An IP address is a unique number that is assigned to every computer connected to the Internet.

**Amendments to the Securities and Futures (Offers of Investments)(Shares and Debentures) Regulations [SF(OIS)(SD) Regulations]**

10 The Eighth Schedule to the SF(OIS)(SD) Regulations prescribes information that should be set out in a prospectus for an offer of asset-backed securities. MAS intends to enhance the disclosure of information relating to underlying assets which are relevant to investors' investment decisions, by requiring the following disclosures:

- (i) Any form of due diligence, including any review, verification or assessment in respect of underlying assets undertaken by the issuer, sponsor, originator, underwriter or any third party

In deciding to invest in asset-backed securities, investors may consider, amongst other things, the quality and risks of the underlying assets as well due diligence checks conducted on the asset pool. We propose to require disclosure of any form of due diligence, including any review, verification or assessment in respect of underlying assets that have been performed. This will encourage parties involved in the offer of the asset-backed securities to conduct more careful due diligence and risk assessment as investors may be less likely to purchase asset-backed securities where the disclosure shows that the extent of due diligence that had been performed is inadequate.

- (ii) The use of derivatives contracts

Certain derivatives instruments, such as interest rate and currency swap agreements, may be used to alter the payment characteristics of cash flows from the underlying assets. Given the impact that derivatives may have on the amounts and timing of cash flow payments, we propose to require issuer to disclose:

- (a) the name of the counterparty to the derivatives contract;
- (b) the nature of the operations and principal activities of the counterparty to the derivatives contract; and
- (c) the material terms and conditions of the derivatives contract, including any limit or restriction on the timing or amount of payments and any condition of payments.

11 The proposed amendments to the SF(OIS)(SD) Regulations are tracked in **Annex 2**.

**Amendments to the Securities and Futures (Composition of Offences) Regulations  
[“SF(CO) Regulations”]**

12 The SF(CO) Regulations empower MAS to offer compositions for offences that are punishable by a fine only, as well as selected offences that may be punishable by imprisonment under the SFA. The composition of an offence gives the offender the option to pay a fine in lieu of prosecution and conviction where appropriate.

13 To give MAS greater flexibility in pursuing appropriate regulatory actions, MAS proposes to allow compositions to be offered for breaches of the following provisions (as tracked in **Annex 3**):

- (i) Dealing in Securities as Principal under Regulation 47B of the SF(LCB) Regulations

A CMS licence holder shall inform its customer that it is acting as a principal in the transaction of sale or purchase of securities.

- (ii) Risk Disclosure by Certain Persons under Regulation 47E of SF(LCB) Regulations

A CMS licence holder that trades in futures contract, carries out leveraged foreign exchange trading or fund management shall furnish the customer with risk disclosure documents and receive acknowledged signed copies of the same documents.

- (iii) Representatives to Act for Only One Principal Company under Section 99J of the SFA

Representatives shall act for only one Principal Company, unless the principal companies are related corporations.

**Technical amendments**

14 Technical amendments will also be made to the Securities and Futures (Markets) Regulations, tracked at **Annex 4**.

## **PART II: REGULATIONS PURSUANT TO THE FAA**

15 MAS is also proposing amendments to the *Financial Advisers Regulations 2012* [“FAR”] similar to amendments proposed for the SF(LCB) Regulations, as set out in Part I of this Consultation Paper. Specifically, the proposed amendments to the FAR, tracked at **Annex 5**, are in relation to:

- (i) expanding the application of the prescribed duties of CEOs and Directors of Financial Advisers’ (“FA”) licence holders, currently set out in Regulation 14 of the FAR, to FA licence holders themselves; and
- (ii) empowering MAS to offer composition for the following offences that are punishable by a fine only and/or imprisonment under the FAA:
  - (a) Representatives to act for only one Principal Company under Section 23G of the FAA; and
  - (b) Disclosure of interest in securities under Section 36 of the FAA.

### **INVITATION FOR COMMENTS**

16 MAS would like to invite comments on the following:

- (i) The proposed amendments to various Regulations under the SFA attached at **Annexes 1 to 4**.
- (ii) The proposed amendments to the *Financial Advisers Regulations 2012* attached at **Annex 5**.



Monetary Authority of Singapore