RESPONSE TO FEEDBACK RECEIVED – CONSULTATION PAPER ON DRAFT SECURITIES AND FUTURES (DISCLOSURE OF INTERESTS) REGULATIONS

On 16 April 2010, MAS issued a consultation paper inviting comments on the draft Securities and Futures (Disclosure of Interests) Regulations [the "Regulations"] to support the provisions relating to notification of interests by directors, chief executive officers and substantial shareholders of listed entities set out in the Securities and Futures (Amendment) Act 2009 ["SF(A)Act"].

MAS has on 5 October 2012 issued the Regulations. The Regulations, which will come into effect on 19 November 2012, can be accessed at the following link:

- http://www.mas.gov.sg/~/media/resource/legislation_guidelines/securities_futures/sub_legislation/sfa_reg/SFADOIREG2012.pdf

We thank all respondents for their comments. MAS has reviewed and considered the feedback received, and incorporated them into the relevant provisions of the Regulations where appropriate. Comments of wider interest and MAS' responses are set out below.

Proposed exemption for securities lending transactions

The Companies (Exemption from Notification of Substantial Shareholding) Order 2004 [the "CA Exemption Order"] currently sets out certain exemptions for securities lending transactions. Briefly, the CA Exemption Order provides that notification requirements will not apply to (a) the holder of a capital markets services licence or an exempt person, who acts as a securities lending intermediary, where the shares are transferred to and out of its account within two business days; and (b) any substantial shareholder who lends his shares pursuant to a securities lending arrangement, provided that he retains all beneficial interests in the shares and is able to exercise any of his rights as a shareholder of those shares.

Following the migration of the requirements relating to disclosure of interests ["DOI"] in listed companies by directors and substantial shareholders from the Companies Act (Cap.50) ["CA"] to the Securities and Futures Act (Cap. 289) ["SFA"], the CA Exemption Order will be repealed. MAS proposed to introduce similar exemptions for securities lending transactions in the Regulations, and extend their application to units in a business trust and real estate investment trust ["REIT"].

With regard to the proposed exemption for a substantial shareholder who retains an interest in the securities lent, several respondents highlighted

that the conditions in the CA Exemption Order were worded too strictly. The exemption was thus rarely invoked in practice. According to respondents, in a typical securities loan, both the legal and beneficial title to the securities would be transferred from the lender to the borrower (and the borrower contractually undertakes to re-transfer the same on the conclusion of the loan). The lender would have a contractual right to receive payments from the borrower that are equivalent to the dividends or other distributions received on the securities during the course of the loan, and may also have a right to require the borrower to exercise voting rights in accordance with the lender's directions. However, the lender is unable to "retain all beneficial interests in the securities" because he no longer holds legal or beneficial title to the securities. Accordingly, the respondents requested that the conditions to the exemption be re-crafted with these considerations in mind.

One respondent also suggested that borrowers be similarly exempted from reporting requirements since they would not be able to exercise voting rights attached to the securities. Another respondent was of the view that both lenders and borrowers could be exempted if the securities were lent and returned within two business days.

On the proposed exemption for securities lending intermediaries, two respondents suggested that the exemption be extended to foreign intermediaries which act in a similar capacity in securities lending arrangements.

MAS' Response

We note respondents' feedback on the terms of a typical securities lending arrangement. We have accordingly amended the Regulations to provide that a substantial shareholder who lends his securities pursuant to a securities lending arrangement shall be exempted from notification requirements if he (a) is entitled to receive all interest, dividends or other distributions of any kind that are paid or delivered in relation to the securities lent; (b) is able to control or direct the exercise of voting rights attached to the securities; and (c) has the right to require a return of the securities during the term of the arrangement.

We also agree with respondents' suggestion to extend the exemption to foreign intermediaries. We have amended the Regulations to include a securities lending intermediary who is regulated in any foreign jurisdiction in respect of dealing in securities.

However, we do not agree with the respondents' comment that borrowers should also be exempted from notification requirements. Where legal title of the securities has been transferred from the lender to the borrower, the borrower becomes the legal owner of the securities and has the ability to dispose or on-lend the securities to another person. Accordingly, the borrower should be subject to notification requirements.

We also wish to clarify that where the lender or borrower is not a securities lending intermediary, the determination on whether he has an interest in the securities and should be subject to notification requirements will depend on the specific nature of this interest. The duration of the lending/borrowing period should not be a relevant consideration.

Proposed exemption for take-over offers

After the making of a take-over offer for securities of a listed entity, the offeror will be subject to disclosure requirements under the Singapore Code on Take-overs and Mergers [the "Take-over Code"] in respect of changes in its interests in the securities. Market is also informed about the take-over offer and would expect the offeror's interest to increase during the period after the offer is declared unconditional in all respects to the close of the offer [the "Relevant Period"]. Hence, it is recognised that the requirement for the offeror to notify the market of every change in percentage level of its interest during the Relevant Period may be too onerous. Accordingly, MAS proposed to exempt an offeror from the notification requirements under Part VII if the change in its interest is due to acceptances received after its take-over offer has been declared unconditional in all respects.

One respondent commented that the Relevant Period should start from the date on which the take-over offer is made if the offer is unconditional in all respects at the outset. The respondent also sought clarification on whether the exemption would extend to acquisitions of interests in the securities other than from the receipt of acceptances e.g. acquisitions through market purchases.

MAS' Response

We agree with the respondent's comment on the Relevant Period and have amended the Regulations to state that the exemption will apply to any change in interest in securities after the offeror has announced the take-over offer and before the offer closes, lapses or is withdrawn. We have also clarified that the exemption will apply to any change in interest that arises from acceptances received or any acquisition or disposal by the offeror, provided that the relevant provision in the Take-over Code on disclosure of changes in interests has been complied with.

Proposed exemption for fund managers within specified limits

To address industry feedback that the requirement for fund managers to aggregate their holdings in securities over which they have disposal rights (but do not exercise voting rights) was too onerous, MAS consulted on a more flexible reporting regime for fund managers, with notification thresholds set at 5%, 10% and every 1% thereafter.

Respondents were generally supportive of the proposed exemption for fund managers. A few of them requested for the exemption to be extended to the holding company of the fund manager.

One respondent cautioned that the exemption should not be applied to unregulated and/or unknown fund managers which could otherwise be set up in tax havens to amass between 5-10% in a listed entity without reporting their positions. The respondent suggested that the exemption be made available only to licensed fund managers in Singapore and overseas.

MAS' Response

In recent years, there has been a marked increase in public expectation in regard to the standard of market disclosures.

We note the original proposal sought to address industry feedback, but could allow fund managers (whether licensed or not) to amass between 5-10% in a listed entity without disclosure to the market. Such a holding is significant and could materially affect the outcome of a significant transaction (e.g. in M&A cases).

Given the passage of time, we have also been able to observe fund managers' compliance with the notification requirements. Based on our observations, fund managers have generally been able to comply with the requirements without significant difficulties.

Subjecting fund managers to the same notification requirements as other market participants will also create a level playing field and enhance market transparency. Accordingly, after careful consideration, we have decided not to proceed with the introduction of a separate notification regime for fund managers.

In recognition of the fact that fund managers are in the business of managing securities on behalf of their customers and do not normally hold a proprietary interest in the securities, a substantial shareholder/unitholder will be required to indicate if he is a fund manager in the notification form. This will increase the level of transparency on the nature of significant holdings of a listed entity.

Prescribed notification forms for persons giving notice under Part VII of the SFA

To standardise the information disclosed to market, MAS proposed to prescribe the notification forms which reporting persons must use for the purposes of complying with their notification obligations under Part VII of the SFA.

Two respondents noted that the prescribed forms were more onerous as compared to the current SGX disclosure notices and requested for MAS to extend the two-business days notification period so that substantial shareholders would have more time to complete the forms. Another respondent suggested that the forms be simplified such that it would be easier for a layman to follow and complete. Two respondents commented that the requirement for the director or substantial shareholder to disclose the amount of consideration was unnecessary and suggested that it be removed.

A few respondents noted that listed entities would have to transpose information contained in the notifications that they receive onto the SGX announcement template and suggested that MAS consider allowing listed entities to attach the notification forms directly onto the SGXNet announcement template. This would improve efficiency of the process and reduce transcription errors.

MAS' Response

Changes in substantial interest holdings constitute price sensitive information which should be released to the market immediately. In this regard, we are of the view that a two-day notification period is reasonable.

However, we note respondents' concerns that substantial shareholders/unitholders may have to spend a longer time to complete the prescribed notification forms. To facilitate compliance, we have re-designed the notification forms to make it more user-friendly e.g. the use of check-boxes wherever possible. We have also developed an electronic version (in ADOBE LiveCycle format) of the notification form which incorporates functions such as auto-population of data in selected fields, ability to import data from or export data to another similar form, etc. As reporting persons become more familiar with the content and workings of the electronic forms, we believe that the time taken to complete the notification form would be reduced.

We agree with the respondents that listed entities should be allowed to attach the notification forms onto the SGXNet announcements upon receipt. Requiring them to replicate the information onto the SGXNet announcement template is inefficient and could give rise to transcription errors. In this regard, we have developed an electronic version of the notification forms (as mentioned above) and worked with SGX to re-design the SGXNet announcement template to allow the listed entity to attach the electronic notification form received from the reporting person onto the template directly. Thus, where the reporting person uses an electronic notification form to notify his interest or change in interest, the listed entity will be able to attach it for immediate dissemination through SGXNet.

As regards the respondents' comment on the requirement to state the price at which the securities are acquired or disposed of in the notification form,

we wish to highlight that such information is currently required to be provided by a director under section 164(5)(*a*) of the CA. The current SGX disclosure notice used by listed companies contains a similar disclosure item. In our view, information on the price at which the securities are acquired or disposed of by the director/chief executive officer ["CEO"] or substantial shareholder/unitholder is relevant to investors. We will continue to require such information to be disclosed.

Other comments

(a) Exemption for participants in collective investment schemes

One respondent noted that section 7(3) of the CA currently provides that a unit in a publicly offered collective investment scheme ["CIS"] would not constitute an interest in a share. The respondent suggested that a similar provision be replicated in the SFA and the Regulations.

MAS' Response
We agree with the respondent. We have introduced a similar provision in the Regulations to exempt an investor who holds units in a publicly offered CIS (other than a REIT) from compliance with the disclosure requirements under Part VII of the SFA if his interest in the underlying securities arises solely by virtue of section 4(3)[1] of the SFA.

(b) Exemption for registered holders in relation to requirement to notify beneficial owners

One respondent noted that a beneficial owner who has authorised another person to hold, acquire or dispose of securities on his behalf would be required under section 137B of the SFA to ensure that the second-mentioned person notifies him of any acquisition or disposal of those securities which may give rise to a disclosure obligation on his part. The respondent was of the view that such a notification to the beneficial owner should not be required if the acquisition or disposal of securities was undertaken in accordance with his instructions. The respondent also sought clarification on whether the obligation to inform the beneficial owner would apply to depository agents who may not be aware of the identities of the actual beneficial owners of the securities.

Another respondent commented that the requirement to notify beneficial owners should not apply to registered holders which are nominee companies as they merely take on a custodian function and do not exercise voting rights of the securities nor dispose these securities held by them.

[1] Section 4(3) of the SFA provides that where any property held in trust includes securities and a person knows, or has reasonable grounds for believing, that he has an interest under the trust, he is deemed to have an interest in those securities.

MAS' Response

We agree with the respondents. We have included a provision in the Regulations to exempt a registered holder from the requirement to give notice if (a) the acquisition or disposal was effected by him under the instructions given by the beneficial owner; or (b) he is holding the securities in the listed entity as a bare trustee, custodian or nominee on behalf of the beneficial owner.

(c) Presumption of knowledge for the purposes of complying with notification requirements

Under the SF(A) Act, a director, CEO or substantial shareholder/unitholder shall notify his interest, or change in interest, within two business days after becoming aware of the change. It is further provided that a person shall be conclusively presumed to have been aware of a fact or occurrence at a particular time if, had he acted with reasonable diligence in the conduct of his affairs, he would have been aware at that time ["Presumption Provision"].

One respondent requested for MAS' guidance on what would be considered a reasonable amount of time that would be permitted to lapse between the occurrence of the event resulting in a change in the person's interest and the time at which he is deemed to become aware of the change. The respondent noted that an allowance of two market days was given in Hong Kong.

MAS' Response

The Presumption Provision aims to clarify that any person who was late in notifying his interest or change in interest as a result of his lack of due care and diligence would not be able to avoid penalties by simply claiming that he was not aware of the occurrence or change. In this regard, while two market days may be generally regarded as an acceptable time, the time at which a person is presumed to be aware of the change is ultimately a matter to be determined based on facts of the case.

(d) Clarification on the term "voting share"

One respondent noted that the notification provisions in Part VII of the SFA and the Regulations refer to "voting shares in the corporation" which appeared to be inconsistent with MAS' previous clarification that the requirement to notify an interest or change in interest should include shares over which the person has authority to dispose but does not exercise voting rights. Accordingly, the respondent sought clarification on whether a substantial shareholder is required to aggregate his interests in shares over which he has (i) both voting and disposal rights; and (ii) disposal rights but no voting rights, when reporting substantial shareholdings.

MAS' Response

"Voting shares", as defined under the SFA, refers to an issued share in a body corporate to which there is attached a right to vote. This should not be confused with whether or not the holder of the voting share actually retains or exercises the right to vote.

MAS has previously clarified that the reporting requirements should not be limited to only those securities over which the holder has ability to exercise voting rights. Information on persons who have the right to acquire or dispose of securities is also important from the perspective of market transparency as it gives useful information on where stakes are concentrated. This position is applied consistently across all the legislation under the purview of MAS, including the Banking Act (Cap. 19).

Therefore, in ascertaining whether there is a disclosure obligation, a substantial shareholder/unitholder will be required to aggregate his holdings in voting shares over which he has (i) voting and disposal rights; and (ii) disposal but no voting rights.

(e) Approval for modification of the notification forms

One respondent noted that MAS may allow modifications to be made to the notification forms and asked if MAS' prior approval would be required for such modifications.

MAS' Response

Yes. Where strict compliance with requirements of the form is not possible in a particular case, the reporting person will need to seek MAS' prior approval for modifications to be made to the form, or for the requirements to be complied with in such other manner as may be appropriate.

Extension of Part VII of the SFA to persons with interests held through partnerships

Currently, a person may be deemed to have an interest in securities held by a corporation pursuant to section 4(4) and (5) of the SFA. As the deemed interest provisions in section 4(4) and (5) are currently drafted with corporations in mind, there is ambiguity as to whether such provisions apply where the securities are held as property of a partnership. As the partners of the partnership would be able to exercise influence over the listed entity's securities held by the partnership in much the same way as the dominant shareholders of a corporation holding the securities, the partners should be subject to similar disclosure requirements under Part VII of the SFA. A new regulation has been introduced to clarify the circumstances under which a person shall be deemed to have an interest in the securities held through a partnership. For instance, where a partnership is deemed to have an

interest in the voting securities of a corporation under section 4 of the SFA, a partner and/or his associates who controls 20% or more of the voting power the partnership would be deemed to have an interest in those securities.

MONETARY AUTHORITY OF SINGAPORE
8 OCTOBER 2012