

CONSULTATION PAPER

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Cyclical Shareholding Arrangements Within Banking Groups

MAS

Monetary Authority of Singapore

A INTRODUCTION

1. In June 2000, the Monetary Authority of Singapore (“MAS”) announced its policy requiring the separation of the financial and non-financial activities of banking groups in Singapore, also known as the “anti-commingling policy”. This policy requires banks in Singapore to focus on their core financial business, so as to minimise contagion risk and conflicts of interest. The policy includes measures to improve corporate governance, and achieve a clear and more transparent ownership and control structure.

2. In July 2001, the Banking Act was amended to give legislative effect to the anti-commingling policy. The amended Banking Act contains new provisions empowering MAS to, among other things, issue regulations restricting cyclical shareholdings (please see paragraph 4) within banking groups. Such cyclical shareholdings mask the sources and extent of control over an entity, weaken the internal discipline to appraise investments made in affiliated parties, and may diminish the influence of minority shareholders and dilute market pressure on the companies in the group.

3. This document invites comments on a proposed regulation restricting cyclical shareholdings within banking groups. The regulation, once finalised, will be issued under section 78(2A) of the Banking Act, and will take effect on 18 July 2004, upon expiry of the three-year grace period granted to banks for any restructuring and divestment required to comply with the anti-commingling policy.

B PROPOSED RULE

4. The following sections describe the proposed restriction on cyclical shareholding arrangements within banking groups. In the case of two entities A and B, a cyclical shareholding situation arises when A holds shares in B and B holds shares in A. In the case of three entities A, B and C, a cyclical shareholding situation arises when A holds shares in B which holds shares in C which holds shares back in A. And so on for four or more entities.

Arrangements and Entities to Which the Restriction Applies

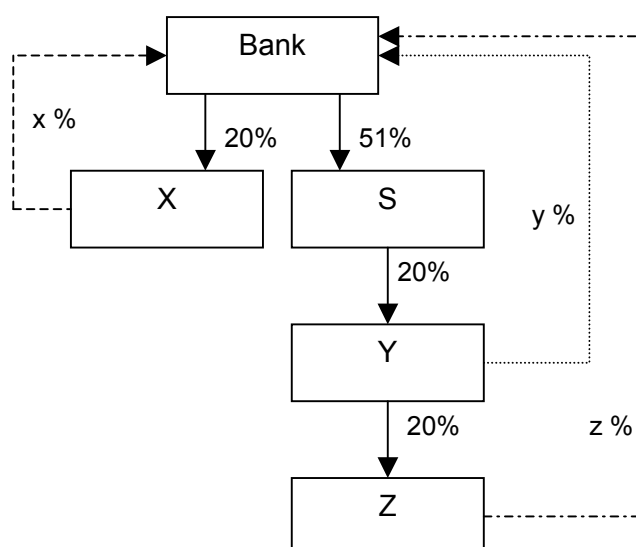
5. Only cyclical shareholding arrangements involving both the bank and affiliated entities will be restricted. Put another way, any cyclical shareholding arrangement involving the bank and non-affiliated entities, or involving

affiliated entities but not the bank, will not be covered by this regulation. An “affiliated entity” of the bank means:

- a. any subsidiary of the bank;
- b. any company in which the bank and its subsidiaries –
 - i. hold in the aggregate a beneficial interest in not less than 20% of the share capital; or
 - ii. control in the aggregate not less than 20% of the voting power;
- c. any subsidiary of a company referred to in sub-paragraph (b); or
- d. any other company where the directors of the company are accustomed or under an obligation, whether formal or informal, to act in accordance with the bank’s directions, instructions or wishes, or where the bank is in a position to determine the policy of the company.

6. The regulation will be legally binding on both the bank and affiliated entities of the bank. In **Figure 1**, S, X and Y are the affiliated entities of the bank; the restriction will apply to these entities, as well as the bank. This regulation will not apply to the stake held by Z in the bank since Z falls out of the definition of “affiliated entity” (although the usual rules on substantial shareholding stakes held in banks in Singapore will apply).

Figure 1



7. Specific exclusions will apply in the case of investments held through insurance and investors’ funds of the bank and affiliated insurers and asset

management companies (“AMCs”). These exclusions are described below in the section “Insurance and Investors’ Funds”.

Restriction of Shareholding Stakes Held in the Bank by Affiliated Entities

8. To better protect the spirit of this rule by preventing circumvention through the use of multiple cycles, while at the same time allowing a measure of business flexibility, shareholding stakes held in the bank by affiliated entities of the bank will be limited to an aggregate 2% of the bank's share capital. Applying this to the situation in **Figure 1** will mean that x+y cannot be more than 2%.

Insurance and Investors’ Funds

9. MAS recognises that investments held using insurance and investors’ funds differ in nature from those held using the equity of the company or group. Hence, investments held through funds where the rights conferred are held and exercised for the primary benefit of the policyholders or clients will be excluded in determining: (1) whether an entity is an “affiliated entity” of the bank, using the definition in paragraph 5, and (2) whether the aggregate stake held in the bank by its affiliated entities is greater than the permissible 2%.

10. **Table 1** summarises the treatment of insurance and investors’ funds of bank-affiliated insurers and capital market intermediaries (which include but are not restricted to asset management companies). Notwithstanding the exclusions in Table 1, MAS may require investments held through these funds to be included if it determines that the rights conferred are not held and exercised for the primary benefit of the policyholders or clients.

Table 1

| Entity | Include (in full; no pro-rating) investments made using | Exclude investments made using |
|-------------------------------|--|--|
| Insurers | <ul style="list-style-type: none"> - Shareholders’ funds - General insurance funds - Non-participating funds - Non-unitised portion of investment-linked funds | <ul style="list-style-type: none"> - Participating funds - Unitised portion of investment-linked funds |
| Capital market intermediaries | <ul style="list-style-type: none"> - Shareholders’ funds | <ul style="list-style-type: none"> - Investors’ funds (typically held in trust/off balance sheet) |

C INVITATION TO COMMENT

11. MAS invites public comment on the proposed rules on cyclical shareholding arrangements within banking groups in Singapore. Please submit your written comments to MAS by 23 June 2003. Your feedback should be addressed to:

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Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117

Fax: 62203973

Email: policy@mas.gov.sg

12. Please note that your feedback may be made publicly available in whole or in part unless confidentiality is specifically requested for some or all parts of your submission.



Monetary Authority of Singapore