



**Monetary Authority of Singapore**

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**GRANTING OF APPROVAL FOR ARRANGEMENTS UNDER  
PARAGRAPH 9, THIRD SCHEDULE OF THE SECURITIES  
AND FUTURES ACT (CAP. 289) [“SFA”]**

**Consultation Paper**

**20 March 2003**

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## INTRODUCTION

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Under section 82(1) of the Securities and Futures Act (Cap. 289) [“SFA”], no person shall, whether as principal or agent, carry on business in any regulated activity, specified in the Second Schedule of the SFA, or hold himself out as carrying on such business for any activity regulated under the SFA, unless he is a holder of a capital markets services licence for that regulated activity or a person exempted under section 99.

2 Section 82(2) of the SFA provides that the licensing requirement shall not apply to any person specified in the Third Schedule of the SFA. In particular, paragraph 9 in the Third Schedule [“Paragraph 9”] allows a foreign company, whose carrying on of any regulated activity is effected through its related corporation licensed under the SFA or exempted under section 99(1)(a), (b), (c) or (d), to do so under an arrangement approved by the Authority. Once such an approval is granted, it is the Authority’s intention to also exclude employees of such foreign related corporation(s) under the arrangement from the licensing requirement under section 83 of the SFA for the specified activities. Such an exemption may entail amendments to the relevant provisions in the SFA and/or the Securities and Futures Regulations, and the Authority is currently in the process of reviewing this provision.

3 The provision in Paragraph 9 recognises the changing business models and global character of financial institutions. Many such institutions in Singapore have mutually beneficial arrangements with related corporations outside Singapore that leverage on their global network and expertise, in order to better service their clients. Paragraph 9 provides the Authority with the regulatory flexibility and discretion to approve such arrangements as are not inconsistent with our objectives of promoting sound and vibrant capital markets, and preserving market integrity.

4 In line with our objectives and in consideration of the different types of arrangements that financial institutions would have with their foreign related corporation(s), the Authority proposes to amend the wording of Paragraph 9 along the lines of “a foreign company whose carrying on of any regulated activity is effected under an arrangement between the foreign company and its related corporation licensed under this Act or exempted under section 99(1)(a), (b), (c) or (d) and such arrangement is approved by the Authority.”<sup>1</sup>

5 The Authority has received a number of queries on what constitutes an arrangement between a licensed entity in Singapore and its foreign related corporation(s) that can be approved under Paragraph 9. This consultation paper aims to provide greater clarity on the Authority’s approach in assessing applications for such approval, and seek comments from the industry on our proposed guidelines.

6 Arrangements involving the foreign branches or foreign head office of a CMS licence holder or an entity exempted under section 99(1)(a), (b), (c) or (d) of the SFA, do not fall within the scope of paragraph 9 because paragraph 9 does not apply in such circumstances<sup>2</sup>. The Authority is currently reviewing whether a requirement for approval similar to Paragraph 9 should be extended to cases where regulated activities are provided in Singapore by the foreign branches or foreign head office of a CMS licence holder or an entity exempted under Section 99(1)(a), (b), (c) or (d) of the SFA, should they wish to effect their activities under an arrangement with the local branch. The results of the review will be released in due course.

#### ***Application of Section 339 (Extra-territoriality of Act)***

7 Section 82(1), read together with section 339 of the SFA, requires a foreign person who conducts a regulated activity partly in and partly outside

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<sup>1</sup> Please note that the proposed wording is only in draft form and may be subject to change by the Authority and the Attorney-General’s Chambers.

<sup>2</sup> Paragraph 9 applies only to arrangements involving foreign related corporation(s) of the CMS licence holder or an entity exempted under Section 99(1)(a), (b), (c) or (d) of the SFA.

Singapore, or wholly outside Singapore which has a substantial and reasonably foreseeable effect in Singapore, to hold a capital markets services licence to carry on such business, unless he has received the appropriate exemption from the Authority. In relation to Part IV of the SFA, regulation 52 of the Securities and Futures (Licensing and Conduct of Business) Regulations 2002 specifies the circumstances under which section 339(2) does not apply to the carrying on of a business in any regulated activity outside Singapore. The Authority is reviewing the scope of application of section 339 and plans to release further guidance on the application of section 339 to relevant Parts of the SFA. As a general rule, the Authority's view is that section 339 is not intended to apply to instances where a foreign entity did not direct, target or solicit residents in Singapore to engage in a regulated activity.

8 We would like to invite you to forward your views and comments on our consultation paper to the following address by 19 April 2003. All submissions should include your name and the name of the company that you represent. Comments to this consultation paper may be made public if you do not indicate any objection for it to be published. The Authority expects to formalise the guidelines by May 2003.

9 If you have any query regarding this consultation paper, you may contact Ms Merion Anggerek (Tel: 6229-9930) or Mr Gue Boon Shiang (Tel: 6229-9239).

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Securities and Futures Supervision Department  
Monetary Authority of Singapore  
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Email: [para9@mas.gov.sg](mailto:para9@mas.gov.sg)

## **APPROACH AND ASSESSMENT CRITERIA**

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10 The Authority will take a facilitative approach to approval of arrangements between a licensed or exempt entity in Singapore ["Singapore Entity"] and its foreign related corporation(s). We recognize that many such arrangements are part of legitimate business activity. At the same time, we do not intend for Paragraph 9 to encourage the establishment of entities in Singapore that are no more than shell companies, facilitate business practices or market conduct that could undermine regulatory integrity, or pose a risk to financial stability and market confidence.

11 In making an application for approval under Paragraph 9, the Singapore Entity shall ensure that its foreign related corporation(s) meets the following criteria:

- i. it has maintained a track record in the proposed activity to be conducted for at least the last 3 years;
- ii. it possesses competence in the specific area of business that it is proposing to effect under an arrangement with the Singapore entity;
- iii. it discharges its duties in an efficient, honest and fair manner;
- iv. it maintains a good ranking in its home country; and
- v. it is subject to proper supervision by its home regulatory authority.

### **ROLES OF PARTIES UNDER THE ARRANGEMENT**

12 In assessing an application, the Authority will take into consideration the nature of the regulated activities proposed to be effected under the arrangement, and the roles of the Singapore Entity and its foreign related corporation(s) in relation to the arrangement. Since rules, regulations and market practices vary across the jurisdictions, the Authority may for prudential reasons give favorable consideration to arrangements where certain key processes of the regulated activity are undertaken or controlled by the Singapore entity.

13 Please refer to Appendix 1<sup>1</sup> for an illustrative list on how the Authority may view a proposed arrangement for a regulated activity under the different scenarios where parts of the process are undertaken in Singapore and parts abroad. Reference to the term "Local" in Appendix 1 connotes that the process is undertaken by the Singapore entity while "Foreign" means that the process is provided by its foreign related corporation(s). For most regulated activities, the Authority would expect order placement and client servicing<sup>2</sup> to be provided by the Singapore Entity.

### **TARGET CLIENTELE**

14 The Authority will also take into consideration the type of customers that the business is targeting, including whether the customers are accredited, institutional or retail investors. Specifically where the arrangements are targeted at retail investors, the Singapore entity should have proper risk disclosure and put in place procedures for dealing with disputes or complaints. In addition, there should also be adequate procedures for appropriate record keeping and access to records kept overseas to ensure a proper audit trail.

15 Generally, the Authority would have less regulatory concerns about arrangements targeting at accredited<sup>3</sup> and/or institutional<sup>4</sup> investors due to their ability to safeguard their own interests. In addition, the industry has raised questions on the regulatory treatment where accredited investors and/or institutional investors use Special Purpose Vehicles ("SPVs"), investment holding companies, trusts, partnerships, and other legal structures as investment vehicles, and whether these vehicles could then be considered as meeting the test of accredited and/or institutional investors in the context of our assessment

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<sup>1</sup> Approval for arrangements includes all regulated activities under the SFA, some may not be illustrated in the examples given in Appendix I.

<sup>2</sup> Client servicing would include sales, marketing, solicitation and other pre-contract and pre-transaction dealings. Due to the wide range and definition of client servicing activities, applicants are required to furnish details and information of such activities to be conducted by the Singapore Entity.

<sup>3</sup> As defined under Section 2(1) of the SFA.

<sup>4</sup> As defined under Section 274 of the SFA.

under Paragraph 9. The Authority is in the process of reviewing the treatment of such entities.

### **APPLICATIONS**

16 The Authority also requires that the Singapore entity can, upon request, provide evidence of an arrangement between itself and the foreign related corporation(s). This may include a contractual agreement that sets out the obligations and responsibility of each entity under the arrangement. In addition, the Authority expects the Singapore Entity to have in place good business practices, structures and controls for the proposed arrangement, as well as take the necessary steps to ensure that the foreign related corporations and their employees comply with all the relevant rules and regulations in this jurisdiction.

17 All applications for approval under Paragraph 9 must state clearly the specific arrangement to be approved. A working guide on information to be included in the application is provided at Appendix II. If an arrangement entails approval under Paragraph 9, and Paragraph 11 of the First Schedule of the Financial Adviser Act, or involves more than one foreign related corporation or regulated activity, the applicant may submit one application.

18 The Authority reserves the right to review the approval of any arrangement if there is material change in the circumstances of the arrangement, or as the Authority sees fit. Changes in the entities involved in the arrangement, types of regulated activities, target clientele, and significant changes in the role of the Singapore entity are considered material.

## REQUEST FOR COMMENTS

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- 19 You are invited to comment on:
- a. The approach and assessment criteria for granting approval under Paragraph 9, and any other factors that the Authority should take into consideration;
  - b. The application procedure, including information to be furnished under the application;
  - c. The regulatory treatment of entities such as SPVs, investment holding companies, trusts, partnership, and other legal structures, where they are used by accredited and/or institutional investors as investment vehicles, and how best to assess whether these entities should be treated as accredited and/or institutional investors;
  - d. The types and extent of changes to an arrangement that are sufficiently material to warrant a review of the approval granted under Paragraph 9;
  - e. Any other issue raised by this consultation paper.



**PROPOSED ASSESSMENT OF APPLICATION FOR APPROVAL OF ARRANGEMENTS UNDER PARAGRAPH 9, THIRD SCHEDULE OF THE SECURITIES AND FUTURES ACT 2001 [“SFA”]**

**TABLE 1**

**Dealing in Securities, Trading in Futures, Leverage Foreign Exchange Trading, Custodial Services, Securities Financing [“Activity”]**

Type of Arrangement	Process Chain								Assessment
	Opening of Account <sup>1</sup>	Order Placement	Trade Execution	Trade Confirmation	Trade Settlement	Client Servicing e.g. admin, enquiries	Custodial Arrangement	Securities Financing	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
1	Foreign	Local	Foreign	Local	Foreign	Part Local and Foreign	Foreign	Local or Foreign	APPROVE
2	Foreign	Local	Foreign	Foreign	Foreign	Part Local and Foreign	Foreign	Local or Foreign	APPROVE
3	Foreign	Part Local and Foreign	Foreign	Foreign	Foreign	Part Local and Foreign	Foreign	Foreign	The application would be reviewed favorably if: <ul style="list-style-type: none"> <li>▪ Clientele for the proposed arrangement is restricted to accredited and/or institutional investors;</li> <li>▪ Substantial portion of the client servicing activities is carried out in Singapore (please also provide details on the type of services provided).</li> </ul>
4	Foreign	Foreign	Foreign	Foreign	Foreign	Part Local and Foreign	Foreign	Foreign	
5	Foreign	Foreign	Foreign	Foreign	Foreign	Foreign	Foreign	Foreign	NOT APPROVE

<sup>1</sup> Where the account is maintained and where transactions are booked

**TABLE 2****Fund Management**

Type of Arrangement	Process Chain				Assessment
	Signing of Mandate	Management of Funds	Marketing/Client Servicing	Custodial Services	
	(1)	(2)	(3)	(4)	
1	Foreign	Local or Foreign	Local	Local or Foreign	APPROVE
2	Foreign	Local or Foreign	Part Local and Foreign	Local or Foreign	<p>Applications would be reviewed favorably where:</p> <ul style="list-style-type: none"> <li>▪ Clientele for the proposed arrangement is restricted to accredited investors and/or institutional investors;</li> <li>▪ Substantial portion of Marketing/Client Servicing (Activity 4) is carried out by the Singapore Entity (please provide details on the activities being carried out).</li> </ul>
3	Foreign	Foreign	Foreign	Foreign	NOT APPROVE

**INFORMATION TO BE SUBMITTED IN THE APPLICATION FOR APPROVAL UNDER PARAGRAPH 9, THIRD SCHEDULE OF THE SECURITIES AND FUTURES ACT 2001 [“SFA”]**

This is intended to be a working guide to aid applicants in the preparation of their submissions. Applicants may furnish any additional information that is deemed to be relevant and useful to support their applications. Applications should be as concise as possible. If necessary, descriptions on transaction processes should be depicted in a flow chart.

Applications are to be made by the Singapore Entity and should be comprehensive and cover all pertinent facts. The Authority should be notified immediately if there is any change in the information furnished in the application after it has been submitted for approval.

**A. General Information**

1. Name of foreign related corporation(s).
2. Name(s) of the Singapore Entity that is relevant to this application. Please state whether the Singapore Entity is licensed under the SFA or exempted under Section 99(1)(a), (b), (c) or (d) of the SFA. (Please present information in a table format if there are more than two relevant Singapore Entities.)
3. Describe the relationship and shareholding structure between the foreign related corporation(s) and the Singapore Entity. Please attach the organisation chart, and include any other related entities that are operating in Singapore. You are not required to provide detailed description of such other related entities unless they are part of the arrangement

**B Information about the foreign related corporation(s)**

4. Date and place of incorporation.
5. Nature and scale of business.  
Describe the nature of business and provide the corporation's revenue/turnover for last 3 years.

6. Licensing status.  
Whether the foreign related corporation is licensed, registered, approved or otherwise regulated, or exempted from licensing under the law of its country of origin. Please also include memberships with securities exchanges or futures exchanges.

For each licence, registration or membership, please specify:

- i. Licence / Registration / Membership Type
- ii. Name of Licensing Authorities / Exchanges
- iii. List of activities that are supervised / regulated by the foreign regulators / exchanges

**C Description of the regulated activities provided by the foreign related corporation(s). (Please present your information separately if there are differences in the arrangement for retail investors and accredited and/or institutional investors.)**

7. For each regulated activity that the foreign related corporation(s) intend to effect under an arrangement with the Singapore Entity, please specify:
- a. Details of activity to be provided.
  - b. Type of customers.  
Please state whether customers are accredited, institutional or retail investors, and provide an estimate of the percentage of each category.
  - c. Description of the activity that the foreign related corporation(s) intend to effect under an arrangement with the Singapore Entity, and whether any part of the activity is conducted directly with clients of the Singapore Entity.  
Please indicate reasons why such activity is not provided by the Singapore Entity.
  - d. Whether the intended activity is regulated in the jurisdiction of the foreign company. If not, please state whether the activity is exempted from regulation.
  - e. Reason(s) for the arrangement between the Singapore Entity and the foreign related corporation(s) under this application.
  - f. Whether there are adequate systems and controls in place that will ensure the soundness and integrity of the activity it provides. Please provide a brief description of such systems and controls.

## **D The role of the Singapore Entity under the Paragraph 9 arrangement**

8. Details on the role played by the Singapore Entity under the arrangement.
  - a. Describe the processes, and the extent of these processes, to be undertaken by the Singapore Entity, in the subset of the overall process chain. You may include a process flow chart to describe the relevant processes.
  - b. Where applicable, describe the remuneration structure for the Singapore Entity with respect to the transactions effected under the arrangement.
  - c. Highlight any potential conflicts of interests on the part of the Singapore Entity that may arise as a result of the arrangement and explain how such conflicts will be resolved or mitigated.

## **E Details on the legal procedures and contractual relationships derived from the arrangement<sup>1</sup>.**

9. Describe the contractual relationships between the Singapore customers, the Singapore Entity and the foreign related corporation(s).
10. Details of risk disclosure and other disclosures to customers, such as the details of the arrangement between the Singapore Entity and the foreign related corporation(s), where applicable.
11. Procedures for dealing with complaints from customers. Details of recourse available to customers should there be any fraud or negligence on the part of the Singapore Entity and the foreign related corporation(s) relating to the customers' accounts.
12. Details of the types and frequency of reports, statements and other documents to be furnished to customers and whether the Singapore Entity does the reconciliation and verification of reports and statements.

## **F Other Information**

13. Any other information that is relevant to the application. Please provide supporting documents where possible.

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<sup>1</sup> Point E10 and 11 are not required to be furnished if the proposed arrangement only serves accredited and/or institutional investors.