

CONSULTATION PAPER

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Draft Securities and Futures (Amendment) Bill 2004 and Financial Advisers (Amendment) Bill 2004

MAS

Monetary Authority of Singapore

PREFACE

1 On 25 September 2003, MAS issued a consultation paper on policy reforms that were being considered for the second phase of amendments to the Securities and Futures Act ("SFA") and the Financial Advisers Act ("FAA"). MAS' response to the comments received during the policy consultation was released on our website in March 2004.

2 This consultation paper invites comments on the draft Securities and Futures (Amendment) Bill 2004 ["SF(A) Bill"] and the Financial Advisers (Amendment) Bill 2004 ["FA(A) Bill"]. The draft Bills contain our proposed legislative amendments to effect policy proposals set out in the September 2003 consultation paper and in MAS' response document issued in March 2004.

3 MAS is also seeking industry practitioners' feedback on certain technical issues (not previously reflected in the September 2003 consultation paper). These relate to the proposed amendments to Part XIII (Offers of Investments) of the SFA, specifically on prospectus exemptions for private placements and small offerings and the distribution of supplementary and replacement prospectuses.

4 MAS invites interested parties to forward their views and comments on the draft SF(A) Bill and FA(A) Bill, as well as the technical issues relating to Offers of Investments. Written comments may be submitted to:

Market Conduct Policy Division
Market and Business Conduct Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Email: amdtbill04@mas.gov.sg

Fax: (65)6225-9766

MAS requests that all comments and feedback be submitted by 24 May 2004.

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

SECURITIES AND FUTURES (AMENDMENT) BILL 2004

1 The draft Securities and Futures (Amendment) Bill 2004 [“SF(A) Bill”] is attached at **Annex 1**. A comparative table, highlighting the proposed amendments with reference to the existing provisions, is attached at **Annex 2**. The amendments in the draft SF(A) Bill primarily seek to implement the policy changes proposed by MAS in its consultation paper issued in September 2003 [“Sep-03 consultation paper”] and in its response to the comments received from the consultation released in March 2004 [“Mar-04 response document”].

NEW PART II, PART III AND PART IIIA OF THE ACT

2 To implement reforms relating to markets and clearing facilities set out in the Sep-03 consultation paper and Mar-04 response document, MAS proposes to repeal and replace the existing Part II (Markets) and Part III (Clearing Facilities) of the SFA.

3 MAS will also shift the provisions for exchange holding companies to a new Part IIIA (Approved Holding Company), which will apply to holding companies of both approved exchanges and designated clearing houses.

Clarifying the Regulatory Framework for Markets

4 The revised Part II will clarify and rationalise the regulatory framework for markets. Any person seeking to operate a market will require MAS’ approval as an approved exchange or recognition as a recognised market operator. The two tiers – approved exchange and recognised market operator – are intended to correspond to two different levels of regulatory oversight. Approved exchanges will be subject to a higher degree of regulatory oversight by MAS than recognised market operators.

5 MAS has refined the regime for recognised trading system (ReTS) providers in Part II, taking into account the emergence of new business models for whom the current framework is inappropriate. We have also renamed ReTS providers as recognised market operators. The relevant provisions are contained in the new Division 3 of the revised Part II.

Introducing A Designation Approach For Regulating Clearing Facilities

6 The revised Part III will introduce a new designation approach for clearing facilities. Persons establishing a clearing facility will no longer need to obtain MAS' prior approval. Instead, such persons need only notify MAS at least 60 business days prior to the commencement of operations (section 53).

7 MAS will only regulate clearing facilities that meet the conditions set out in section 58, and will designate corporations operating these facilities as designated clearing houses. This approach will be less intrusive for clearing facilities that do not pose significant risks to the stability of the financial system.

8 The more significant changes contained in the revised Parts II and III and the new Part IIIA are elaborated at **Annex 3**.

TECHNICAL ISSUES RELATING TO OFFERS OF INVESTMENTS

9 Apart from the draft SF(A) Bill, MAS would like to obtain industry practitioners' feedback on technical issues relating to amendments to Part XIII (Offers of Investments) not reflected in the Sep-03 consultation paper. These relate to prospectus exemptions for private placements and small offerings, as well as the distribution of supplementary and replacement prospectuses.

Private Placement and Small Offering Exemptions

10 As set out in the Sep-03 consultation paper, MAS proposed amending Part XIII to implement the recommendations of the Company Legislation and Regulatory Framework Committee ("CLRFC"). In particular, the existing distinction between public and private offers would be replaced with an approach requiring a prospectus for all offers of investments, unless specifically exempted under the SFA¹. The CLRFC recommended the following new exemptions: private placements made to less than 20 investors and small offerings of less than \$5 million. These are reflected in the following new sections – Sections 272A, 272B, 302B and 302C. MAS seeks the industry's views on issues relating to the administration of the two exemptions. These are set out at **Annex 4**.

¹ In its October 2002 report, the CLRFC pointed out that the existing imprecision in distinguishing public offers from private ones resulted in practical difficulties for issuers.

Supplementary And Replacement Prospectuses And Profile Statements

11 Under the SFA, a person making an offer of units in a collective investment scheme (“CIS”), shares or debentures needs to lodge a supplementary or replacement prospectus or profile statement (“correcting document”) when he becomes aware of any defect in the registered prospectus or profile statement (“original document”) or to reflect any new circumstance that has arisen since the lodgment of the original document. The SFA currently requires such correcting document to be sent to all applicants and, in the case of CIS, to the applicants² for units in the CIS as well as all existing participants of the CIS.

12 MAS proposes the following:

- (a) as an alternative to sending the correcting document, to allow offerors to send a notice to the applicants³ on the availability of the correcting document within two business days from the date of lodgment of the correcting document (sections 241 and 298); and
- (b) in response to suggestions from industry, to require correcting documents for CIS to be sent only to applicants⁴ who subscribed for units in the CIS under the original document being corrected (section 298(10))⁵.

13 Details on the proposals stated above are set out at **Annex 4**.

² This includes CIS participants who had earlier subscribed for their units on the basis of the original document being corrected.

³ In the case of CIS, this includes participants who had earlier subscribed for their units on the basis of the original document being corrected.

⁴ This includes CIS participants who had earlier subscribed for their units on the basis of the original document being corrected.

⁵ Paragraph 4.2(d) of the Code on Collective Investment Schemes (CIS Code) requires the manager of a CIS to inform participants of significant changes to the scheme not later than one month before the change is to take effect. With the proposed change in section 298(10) where it will no longer be necessary for managers to send correcting documents to participants who did not subscribe for units of CIS on the basis of the original document, MAS will amend paragraph 4.2(d) to clarify the circumstances that will constitute significant changes for which prior notification is required.

FINANCIAL ADVISERS (AMENDMENT) BILL 2004

14 The draft Financial Advisers (Amendment) Bill 2004 ["FA(A) Bill"] and the accompanying comparative table are attached at **Annexes 5 and 6** respectively.

15 Apart from implementing the policy changes articulated in the Sep-03 consultation paper and the Mar-04 response document, the draft FA(A) Bill seeks to incorporate policy changes to further streamline the FAA and to align it with the amendments proposed in the draft SF(A) Bill.

Amendments to the Financial Advisers Regulations ("FA Regulations")

16 Some of the policy changes proposed in the Sep-03 consultation paper and the Mar-04 response document require amendments to the FA Regulations or to both the FAA and the FA Regulations. These policies include:

- (a) "generally circulated advice" – MAS will prescribe in the FA Regulations the circumstances and conditions⁶ under which "generally circulated advice" provided to investors need not meet the requirements of section 27 of the FAA (Recommendations by licensees). We will further prescribe in the FA Regulations up-front disclosure requirements that financial advisers need to comply with when providing "generally circulated advice"⁷.
- (b) provision of financial advisory services to overseas investors – MAS will exempt financial advisers ["FAs"] from the business conduct provisions in Part III of the FAA (except section 33) when they provide financial advisory services to overseas investors. The meaning of "overseas investors" will be prescribed for the purpose of this exemption⁸.

⁶ As set out in the Sep-03 consultation paper, "generally circulated advice" will be exempted from the need to comply with section 27 if the advice:

- (a) is not targeted at a specified individual but is generally disseminated to the public or a section thereof; and
- (b) does not purport to take into account the recipient's investment objectives, financial situation and particular needs.

⁷ MAS will make necessary amendments to Notice No. FAA-N01 ("Notice on Recommendations on Investment Products").

⁸ MAS will make necessary amendments to Notice No. FAA-N01 and Notice No. FAA-N03 ("Notice on Information to Clients and Product Information Disclosure").

- (c) persons giving advice to institutional investors – MAS will no longer subject persons giving advice to institutional investors to the FAA. The definition of “institutional investors” will be aligned with that set out in the draft SF(A) Bill at **Annex 1**.

MAS will seek comments from interested parties on the proposed amendments to the FA Regulations.

INVITATION FOR COMMENTS

17 MAS would like to invite comments on the following:

- (a) the draft SF(A) Bill attached at **Annex 1**;
- (b) the technical issues relating to Offers of Investments, which are attached at **Annex 4**; and
- (c) the draft FA(A) Bill attached at **Annex 5**.



Monetary Authority of Singapore