RESPONSE TO FEEDBACK RECEIVED - CONSULTATION PAPER ON DRAFT REGULATIONS PURSUANT TO PART XIII OF THE SECURITIES AND FUTURES (AMENDMENT) ACT 2005

On 26 January 2005, MAS issued a consultation paper inviting comments on the draft Regulations to be issued pursuant to Part XIII of the Securities and Futures (Amendment) Act 2005 ("SF(A)A") on Offers of Investments.

The consultation closed on 25 February 2005. Comments were received from 17 respondents (listed in the Annex). MAS has carefully considered the comments received and where it has agreed with the comments, incorporated them into the relevant Regulations pursuant to Part XIII of the SF(A)A.

MAS thanks all respondents for their feedback. Comments of wider interest and MAS' responses are highlighted below.

Comments on the Draft Securities and Futures (Offers of Investments) (Shares and Debentures) (Amendment) Regulations ("SF(OI)(SD)(A)R")

1. Definition of Structured Notes

The draft SF(OI)(SD)(A)R proposed to introduce new prospectus provisions in relation to offers of structured notes. A respondent commented that the proposed definition of "structured notes" might not be sufficiently comprehensive.

MAS' Response

We agree with the comment and have expanded the definition of structured notes to include instances where -

(a) there is delivery of one or more securities, currencies and/or other commodities upon maturity or termination; and

(b) interest or other payments are calculated in accordance with an underlying formula which is linked to the credit risk or performance of any, or a basket consisting of any, entities, securities, equity interests, commodities or indices and/or the movement of interest rates or currency exchange rates.

2. General Requirements for documents lodged with the Authority

The draft SF(OI)(SD)(A)R proposed to amend regulation 11 to require all signatures, forms and signed statements accompanying the offer documents to be scanned as electronic images and submitted to MAS in electronic form.

A respondent sought clarification as to whether the electronic images of the signatures will be published by MAS. The respondent was concerned that any publication of the signatures could result in the signatures being copied and used for fraudulent purposes.

MAS' Response

We note the respondent's concern and would like to clarify that electronic images of the signatures will not be published on OPERA.

3. Form or medium of document

To facilitate MAS' review of the lodged document, the draft SF(OI)(SD)(A)R proposed to amend regulation 12 to require the submission of a hard copy for certain types of offer documents, in addition to the document officially lodged in electronic form. It was further proposed that the hard copy document must be accompanied by a signed statement of the person making the offer or a person authorised by him for this purpose in writing, verifying that the hard copy is a true copy of the document lodged with the MAS in electronic form.

A respondent commented that it could be administratively difficult to obtain the signed statements of all the persons making the offer in instances where numerous persons are involved. To facilitate the lodgment process, the respondent suggested that we also allow the verification statement to be signed by a person acting on behalf of the person making the offer, such as an advocate

and solicitor.

MAS' Response

We agree with the respondent's comment and have amended regulation 12(2) to allow the verification statement to be given by an advocate and solicitor acting on behalf of the person making the offer.

4. Pre-deal Research Reports

Following amendments made to section 251(9) in the SF(A) Act, pre-deal research reports will be allowed to be issued to institutional investors in the case where the offer is concurrently made in Singapore and in one or more other jurisdictions where pre-deal research reports are permitted. To reduce the risk of any information in the pre-deal research reports leaking to the public, certain safeguards have been proposed in the new regulation 16A.

4.1 Disclosures

a) Several respondents commented that the prominent disclosure of the information set out in regulation 16A(c) in the report should be adequate, and that we need not require that such disclosures be made on the front cover.

MAS' Response

We do not agree. We are of the view that the specified disclosures are important and should be prominently highlighted on the front cover of pre-deal research reports distributed in Singapore. We also note that the disclosures required are relatively simple and that there are no rules or regulations in other jurisdictions prohibiting the inclusion of such information on the front cover.

b) The same respondents also commented that the requirement in regulation 16A(d) for the person issuing the report to disclose the nature of any interest in, or any interest in the issue or sale of, the securities that are the subject of the report and any relationship between him and the person making the offer of the securities is too broadly worded. One respondent suggested that the disclosure be restricted to material interests and relationships so that it is not overly extensive.

MAS' Response

We note the respondents' concern and have amended regulation 16A(d) to confine the requirement for disclosure to material interests and material relationships.

c) One respondent commented that the proposed provision to prohibit the disclosure of information contained in the research report to any person should exclude information which is already publicly available.

MAS' Response

We agree with the respondent and have revised regulation 16A(e) to exclude information which is already publicly available prior to the date of the report.

4.2 Offer must be made in One or More Other Countries

A respondent sought clarification on the condition in section 251(9)(g)(i) of the SF(A) Act which provides that the offer must also be made in one or more other countries. Specifically, the respondent queried if (i) an offer made only to one citizen or resident of another country, or (ii) a private placement or an offer made in reliance on safe harbours in another country, would qualify as an offer in one or more countries for the purposes of allowing pre-deal research reports to be distributed to institutional investors in Singapore.

MAS' Response

The intent of section 251(9)(g) is to allow pre-deal research reports to be issued to institutional investors in the case where the offer is or will be a global offering (such as an offer which is concurrently made to investors in Singapore and to investors in the US under Rule 144A of the Securities Act 1933). Although we are concerned with the risk that investors, especially retail investors, may be conditioned by the report instead of relying on the registered prospectus as the primary document for making their investment decisions, we recognise that for such a global offering, institutional investors in Singapore may be placed at a disadvantage if they are not able to receive these reports which their foreign counterparts would have access to. Hence, we have allowed pre-deal research reports to be issued only in respect of global offerings, the concept of which is well established in

practice. We would not consider an offer to be a global offering if it is made only to one citizen or resident in another country.

5. Exemption to facilitate Market-Making

The draft SF(OI)(SD)(A)R proposed a new regulation 22B to exempt a person acting as market-maker from the aggregation requirement in section 272A(5) for the resale of securities. This exemption would only apply if the securities being offered were previously sold by the market-maker in reliance on the small offers exemption in section 272A(1) and subsequently repurchased by him in his capacity as market-maker.

Several respondents had sought clarification on how the exemption should be applied. To provide clarity and better reflect our policy intent, we have replaced the proposed regulation 22B with a new exemption to facilitate market-making. The revised regulation 22C will exempt a person making an offer of securities to a market-maker from the requirement in section 272A(8)(c)(iii) to provide a written statement and notification. This new exemption will facilitate the sale of securities by purchasers to the market-maker in reliance on the exemption in section 272A(8)(c) and in so doing, enable the market-maker to continue relying on section 272A(8)(c) for the resale of those securities to other purchasers without triggering the aggregation rule.

5.1 Are Offers made by Issuer and Market-Maker Closely Related?

Several respondents sought clarification as to whether the offer made by the issuer to the market-maker and the market-maker's subsequent offers of the same securities would be regarded as closely related offers and accordingly, whether the issuer would be required to aggregate its offer with those made by the market-maker.

MAS' Response

Given that the issuer's initial offer and the market-maker's subsequent offers are neither made by the same person or for the benefit of the same person, nor are they part of the same plan of financing or in relation to a common business venture, they will not be regarded as closely related offers for the purposes of section 272A(5) or 272B(3) of the SF(A) Act.

It should also be noted that the aggregation rule in sections 272A(5) and 272B(3) of the SF(A) Act will not apply in respect of offers that are made in reliance on different exemptions. For example, if the issuer had relied on the private placement exemption under section 272B to offer its securities to the market-maker and the market-maker had in turn relied on the small offers exemption in section 272A(1) to on-sell the securities, the aggregation rule would not apply and hence, whether or not the offers are closely related would not be relevant.

5.2 Scope of Exemption

a) Several respondents suggested that a separate regulation be included to exempt a person acting as market-maker from the aggregation rule under section 272B(3) so as to allow for the secondary trading of securities where the total value issued exceeds S$5 million.

MAS' Response

The basic premise of an exempted offer is that it should be limited in reach (whether in terms of the size of the offering or the number of investors). Otherwise, the offer may in effect amount to one for which a prospectus would have been required.

Offers made in reliance on the small offers exemption are subject to a cap of S$5 million in 12 months and are restricted to qualified investors. Where a market-maker has acquired securities from the issuer for on-sale, it is likely that the market-maker will on-sell those securities to persons who have previously indicated to the market-maker that they are interested in securities of that kind (i.e. persons described in section 272A(3)(b)(iii) of the Act). Similarly, any subsequent resale of the securities by the market-maker is likely to be confined to the same group of interested persons.

On the other hand, offers made in reliance on the private placement exemption are not subject to any limit on the amount of funds raised and every resale of securities by the market-maker could potentially be made to 50 different offerees. Exempting subsequent placements of securities by the market-maker from the aggregation rule could therefore result in an unlimited amount of securities being offered to an unlimited number of persons (through several rounds of sale and resale). This would not accord with our policy intent that exempted offers should be limited in reach. Hence, we do not agree with the proposal to exempt a person acting as market-maker from the aggregation rule under section 272B(3).

b) One respondent suggested it be made clear that the exemption in regulation 22B is intended to facilitate market-making activities

in respect of securities offered through a private equity market, and other market making activities undertaken for securities such as covered warrants traded on SGX would not be subject to the conditions specified in regulation 22B.

MAS' Response

Regulation 22B provides an exemption to facilitate market-making in a case where the market-maker is making an offer in reliance on the small offers exemption. Given that the secondary trading of securities on SGX and covered warrants are separately exempted under section 273(1), market-makers will not need to rely on section 272A(1) to offer them to investors. Hence, regulation 22B will not be relevant.

c) A respondent also suggested that we consider granting an explicit exemption for all market-makers from the provision in section 276(1) of the SFA which prevents market-makers from on-selling securities which were acquired pursuant to section 274 or 275 to persons other than institutional investors, relevant persons as defined in section 275(2) and offerees referred to in section 275(1A) within the first 6 months of their acquisition of the securities.

MAS' Response

We do not agree with the proposal. The intent of section 276(1) is to restrict the resale of securities acquired under sections 274 and 275 to only institutional investors, relevant persons as defined in section 275(2) or offerees referred to in section 275(1A), within the first 6 months. Market-makers for such securities should therefore confine their sales to institutional and accredited investors (as per current practice) within the first 6 months.

d) The respondent also suggested that we consider granting market-makers an exemption from the resale restriction in section 272A(8)(c) such that market-makers will be able to on-sell securities that were acquired pursuant to section 272A(1) to persons other than those who are connected to the original offeror within the first 6 months of their acquisition of the securities.

MAS' Response

We are of the view that such an exemption is not necessary. Given that the market-maker must be the holder of a capital markets licence for dealing in securities or a person exempted from such licensing, he would already be able to rely on section 272A(8)(c) to on-sell the securities to persons other than those who have prior contact or connection with the original offeror so long as they have previously indicated to him that they were interested in offers of that kind.

6. Determination of closely related offers

The draft SF(OI)(SD)(A)R proposed a new regulation 22C which sets out the circumstances under which two offers would be considered as being closely related and would need to be aggregated for the purposes of determining whether the prescribed limit of S$5 million under the small offers exemption in section 272A or the 50-persons limit under the private placement exemption in section 272B has been exceeded.

a) Several respondents sought clarification on whether subsequent offers made pursuant to other exemptions - such as offers made pursuant to Sections 274 or 275 of the SFA - would be included in determining whether an offer of securities is more than S$5 million or made to more than 50 persons in a 12-month period.

MAS' Response

The aggregation rule will apply only in respect of offers that are made in reliance on the same exemption. Accordingly, offers made pursuant to other exemptions need not be aggregated.

b) Some respondents sought our confirmation that a person could seek MAS' determination for an offer to not be regarded as a closely related offer notwithstanding the fact that the offer could fall within the ambit of regulation 22C.

MAS' Response

Yes. A person may seek MAS' determination for an offer to not be regarded as a closely related offer. Such determination should be sought prior to the offer being made.

c) Three respondents commented that the criteria for determining whether an offer is a closely related offer should be worded more narrowly and in particular, the reference to a "single plan of financing". The respondents commented that based on the proposed criteria, all offers of securities issued by a company would be regarded as closely related offers since the company would have

discretion over the net proceeds raised from these offers, even though the proceeds may be raised through different avenues (for example, where it uses special purpose vehicles for financing).

MAS' Response

The intent of the aggregation rule is to prevent a person from circumventing the limits imposed under the small offers and private placement exemptions through the issue of different types of securities or the use of different fund raising vehicles.

Specifically, in the scenario referred to in (c), we are of the view that offers of securities issued by a company using different avenues of financing should be aggregated if the company will have discretion over the net proceeds raised from these avenues.

(d) A few respondents noted that the criteria used for determining whether an offer is a "closely related offer" is different between offers of securities and offers of units in collective investment schemes. These respondents were concerned that the use of product-specific criteria in determining whether offers should be treated as "closely related offers" could result in certain offers being regarded as "closely related" when applying one set of criteria but not "closely related" when applying another set of criteria. The potential incongruence could also translate into practical and operational difficulties when establishing compliance procedures and processes for the monitoring of aggregation limits under the safe harbours.

MAS' Response

We note the respondents' concern and the operational difficulties that may arise as a result of the different criteria in respect of offers of securities which are asset-backed securities or structured notes and offers of collective investment schemes. We have accordingly amended regulation 22C to introduce separate criteria for offers of asset-backed securities and structured notes which would differ from the criteria applicable to offers of securities for fund-raising.

(e) One respondent sought clarification on whether securities issued by different issuers but guaranteed by the same guarantor would be aggregated under the criteria that they are made for the benefit of the same person or made in connection with the same business or in relation to a common business venture.

MAS' Response

As the guarantor will not primarily benefit from the offer of securities issued by different issuers, these offers need not be aggregated.

7. New Exemption from Requirement to Issue Pricing Statement

A respondent commented that the requirement to file a pricing statement for each and every single deal is not feasible in respect of some over-the-counter investment products where the customer negotiates the choice of underlying instruments, amount, tenor, strike or interest of the investment. To facilitate the offer of such products, the respondent suggested that a generic product program/prospectus describing the product, terms and conditions would suffice and a pricing statement need not be lodged.

MAS' Response

We agree with the proposal and have inserted a new regulation to exempt specified financial institutions from having to lodge a pricing statement in respect of structured notes whose terms are negotiated and agreed upon with individual investors over-the-counter. This is subject to certain conditions which include the provision of a transaction note to investors at the time of the transaction.

8. Definition for Latest Practicable Date

To ensure that up-to-date information is contained in the prospectus, we proposed to clarify in the Fourth Schedule to the SF(OI)(SD)R that the "latest practicable date" should be a date that is the latest practicable and not earlier than 14 days prior to date of lodgment of the prospectus.

Two respondents commented that this proposal could pose practical difficulties in cases where the month-end closing of the accounts of a company does not fall within the 14-day period prior to the date of lodgment of the preliminary prospectus.

MAS' Response

To address the respondents' concerns while ensuring that the information in a prospectus is reasonably up-to-date, we have

amended the Third Schedule to allow the preliminary prospectus to contain information required to be provided as of the latest practicable date, as at a date which is not more than 1 month prior to the date of lodgment of the preliminary prospectus. This information, however, must be subsequently updated before the registration of the prospectus to a date which is not earlier than 14 days prior to the date of lodgment of the preliminary prospectus.

9. Use of Small Offers and Private Placement Exemptions by Listed Issuers

One respondent sought clarification on whether a listed entity will be able to rely on the small offers and private placement exemptions for subsequent offers of securities after its listing and hence will not be required to lodge and issue an offer information statement.

MAS' Response

Where a listed entity makes an offer to a wide group of investors, we expect that sufficient information should be made available to these persons and in this regard, we would expect an offer information statement to be lodged. However, listed entities can rely on the private placement exemption to offer securities to selected strategic investors from time to time as per current practice.

Comments on the Draft Securities and Futures (Offers of Investments) (Collective Investment Schemes) (Amendment) Regulations ("SF(OI)(CIS)(A)R")

10. Covenant on redemption of units at net asset value

MAS issued guidelines on the method and frequency of valuation of CIS on 1 Mar 2004, which are set out in paragraph 8 of the Code on Collective Investment Schemes. To make it clear that the trust deed of an authorised scheme must contain a covenant binding the manager to comply with those valuation guidelines, the draft SF(OI)(CIS)(A)R proposed amending regulation 8(1)(a)(iii) such that the manager is required to "issue, redeem or repurchase units in the scheme at a price based on the net asset value of the scheme calculated in accordance with the manner set out in the Code on Collective Investment Schemes".

Some respondents pointed out that not all units would be issued, redeemed or repurchased at a price based on the net asset value of the scheme. For example, units in a new CIS (including REITs) are issued at an initial offer price and secondary issues of new units in a listed real estate investment trust ("REIT") are made at market price.

MAS' Response

We agree with the comment. Regulation 8(1)(a)(iii) will be amended to require the manager to "issue, redeem or repurchase units in the scheme at a price based on the net asset value of the scheme *or otherwise,* in accordance with the Code on Collective Investment Schemes".

Concurrently, the Code will be amended to clarify that -

(a) the requirement to issue units at NAV would not apply during the initial offer period of the scheme (including REITs); and

(b) secondary issues of new units in a listed REIT may be made at market price.

11. Content of advertisements

To discourage misleading advertisements and publications that may include material information not contained in the registered prospectus, regulation 20B of the draft SF(OI)(CIS)(A)R proposed that an advertisement or publication must not contain any information that is not included in the latest registered prospectus or profile statement of the scheme or the latest semi-annual or annual report of the scheme, with the exception of the latest past performance of the scheme, performance of the benchmark and composition of the portfolio of the scheme.

Many respondents commented that this requirement would be too restrictive. For example, CIS advertisements commonly contain taglines which are, strictly speaking, not contained in the prospectus or profile statement of the scheme. As another example, it is common for managers to issue monthly fund factsheets which are used to update both existing and potential investors about the scheme. These factsheets could contain information such as the manager's latest outlook and proposed asset allocation, as well as

the latest net asset value or size of the scheme. Such information might not have been included in the latest prospectus and could be useful to investors. It would be impractical to expect managers to lodge supplementary or replacement prospectuses or profile statements on a monthly basis in order to include such information in the factsheets.

MAS' Response

We accept that there are practical difficulties to the proposed requirement. In view of the fact that CIS advertisements and publications are already subject to the existing regulation 21 which prohibits an advertisement or publication from containing any information that is false or misleading, or creating an overall false or misleading impression about a CIS, regulation 20B will be removed.

12. Minimum font size for advertisements

Regulation 29(2)(b) of the draft SF(OI)(CIS)(A)R proposed that the minimum font size for the requisite warning statements and footnotes contained in an advertisement or publication such as a newspaper, magazine or website be increased from 8 to 10-point Times New Roman.

One respondent suggested allowing alternatives such as highlighting the footnote in bold instead of increasing the minimum font size.

MAS' Response

We do not agree with the suggestion. Our experience and public feedback have shown that the current minimum font size of 8-point Times New Roman is too small to be sufficiently legible, even if the wording was in bold print. (It should be noted that the new minimum font size of 10-point Times New Roman is in addition to, not a substitute for, the requirement that the advertisement or publication must be clearly legible. Issuers of CIS advertisements or publications are not precluded from highlighting certain wordings in bold to improve their legibility.)

13. Offers made using WAP phones

Regulation 31(2) of the draft SF(OI)(CIS)(A)R proposed requiring that the person making an offer of units in a CIS using a WAP phone must submit to MAS a statement of the URL from which the offer is made.

One respondent sought clarification on whether the fund manager or distributor is required to comply with the requirement, in the case where the offer is made via the URL of the distributor (such as a bank).

MAS' Response

We note the need for clarification. Regulation 31(2) will be amended such that the person making the offer may either submit, or *cause to be submitted,* to MAS a statement of the URL from which the offer is made. While the responsibility to cause the statement to be submitted would still lie with the person making the offer, the amendment would allow the distributor to submit such statement to MAS directly.

ANNEX

LIST OF RESPONDENTS

1. ABN AMRO Bank N.V Singapore
2. Allen & Gledhill
3. Citibank N.A., Singapore Branch
4. Citicorp Investment Bank (Singapore) Ltd
5. Ernst and Young, Singapore
6. KPMG Singapore
7. Oversea-Chinese Banking Corporation Limited
8. Phillip Securities Private Limited
9. Prudential Asset Management (Singapore) Limited
10. Schroder Investment Management (Singapore) Limited
11. Securities Association of Singapore
12. Singapore Exchange Limited

13. Tan Kok Quan Partnership
14. The Association of Banks in Singapore
15. The Law Society of Singapore
16. UBS AG, Singapore Branch
17. Wong Partnership

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