

CONSULTATION PAPER

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Draft Regulations and Guidelines Pursuant to the SFA and FAA

MAS

Monetary Authority of Singapore

DRAFT REGULATIONS AND GUIDELINES PURSUANT TO SECURITIES AND FUTURES ACT AND FINANCIAL ADVISERS ACT

PREFACE

The Securities and Futures (Amendment) Bill 2005 and the Financial Advisers (Amendment) Bill 2005 were passed in Parliament on 25 January 2005. Prior to this, we conducted public consultations on the policy proposals (in our consultation paper dated 25 September 2003) and the draft Bills (in our consultation paper dated 22 April 2004). MAS' responses to the comments received during the policy consultations are published on our website.

2 MAS will be issuing new Regulations and Guidelines, and also amending certain existing Regulations, in order to support the amendments contained in the Securities and Futures (Amendment) Bill 2005 and Financial Advisers (Amendment) Bill 2005.

3 MAS invites interested parties to provide their views and comments on the draft Regulations and Guidelines. 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: SFFARegs@mas.gov.sg
Fax: (65)6225-9766

MAS requests that all comments and feedback be submitted by 25 February 2005.

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

REGULATIONS AND GUIDELINES PURSUANT TO THE SECURITIES AND FUTURES ACT (“SFA”)

Markets, Clearing Facilities And Approved Holding Companies

1 In line with the changes introduced in the Securities and Futures (Amendment) Bill 2005 [SF(A) Bill], MAS will be repealing and replacing the following existing Regulations:-

- (i) Securities and Futures (Markets) Regulations; and
- (ii) Securities and Futures (Clearing Facilities) Regulations.

MAS will also be issuing two new sets of Regulations, namely:-

- (i) Securities and Futures (Approved Holding Companies) Regulations; and
- (ii) Securities and Futures (Corporate Governance of Approved Exchanges, Designated Clearing Houses and Approved Holding Companies) Regulations.

2 The draft Securities and Futures (Markets) Regulations (at *Annex 1*) set out, amongst other things, the criteria to be applied by MAS when assessing the systemic importance of market operators wishing to establish markets in Singapore.

3 The draft Securities and Futures (Markets) Regulations and the Securities and Futures (Clearing Facilities) Regulations (at *Annex 2*) also regulate the process by which approved exchanges and designated clearing houses amend their business or listing rules.

4 The draft Securities and Futures (Approved Holding Companies) Regulations (at *Annex 3*) will operationalise the new Part IIIA of the SF(A) Bill, which provides for the regulation of holding companies of approved exchanges and designated clearing houses.

5 The draft Securities and Futures (Corporate Governance of Approved Exchanges, Designated Clearing Houses and Approved Holding Companies) Regulations (at *Annex 4*) sets out corporate governance requirements for approved exchanges, designated clearing houses and approved holding

companies, including requirements on the independence of their boards and board committees.

6 MAS will also be issuing an amended version of the Guidelines on the Regulation of Markets (at *Annex 5*) and new Guidelines on the Regulation of Clearing Facilities (at *Annex 6*). These Guidelines will provide market participants with a better understanding of how MAS will administer the legislative provisions relating to markets and clearing facilities.

Offers Of Investment

7 In conjunction with the changes introduced in the SF(A) Bill, MAS will be making consequential amendments to the Regulations pertaining to Part XIII of the SFA on Offers of Investments. These include amendments relating to the abolition of the concept of public offers and the introduction of the small offers and private placement exemptions, as well as the migration of certain provisions (such as those relating to asset-backed securities, debenture issuance programmes and offers made using ATMs or WAP phones) from the Regulations to the main Act.

8 MAS is also proposing new rules to cater for offers of new and potentially complex investment products such as structured notes. At the same time, MAS will be amending existing requirements with a view to improving overall administrative efficiency. For example, existing lodgment provisions will be modified to tap on the efficiency of the electronic medium.

9 The proposed amendments to existing Regulations and proposed new Regulations are set out as follows:

- (i) Amendments to the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations (at *Annex 7*);
- (ii) Amendments to the Securities and Futures (Offers of Investments) (Business Trusts) Regulations. These amendments will be similar to those made to the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations, and hence have not been attached in this consultation paper;

- (ii) Amendments to the Securities and Futures (Offers of Investments) (Collective Investments Schemes) Regulations (at *Annex 8*);
- (iii) New Securities and Futures (Reference to Affairs of a Business Trust and Affairs of an Entity) Regulations (at *Annex 9*);
- (iv) Proposed transitional provisions (at *Annex 10*).

Other Draft Regulations Pursuant to the SFA

10 The draft Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations (at *Annex 11*) propose amendments to clarify MAS' policy intent to aid industry players in their compliance with our laws and regulations. The draft Regulations allow for the grant of unsecured credit, subject to certain limits, to officers and employees¹ of capital markets services licencees for the purpose of trading capital markets products. As investments in real estate are outside the regulatory ambit of MAS, the draft Regulations will provide a class exemption for persons from holding a capital markets services licence if that person manages a fund which invests in securities of single purpose vehicles that hold real estate.

11 The draft Securities and Futures (Prescribed Futures Contracts) Regulations attached (at *Annex 12*) prescribes additional classes of commodity futures contracts as futures contracts under the SFA.

12 The draft Securities and Futures (Prescribed Specific Classes of Investors) Regulations attached (at *Annex 13*) prescribes additional classes of investors as accredited investors under the SFA. It also sets out the fee schedules for applications to be declared as institutional investors.

¹ Other than a director who is not an employee.

REGULATIONS PURSUANT TO THE FINANCIAL ADVISERS ACT (“FAA”)

13 The key amendments proposed in the draft Financial Advisers (Amendment) Regulations (“FA(A) Regulations”) (at *Annex 14*) are set out below.

14 The draft FA(A) Regulations exempt licensed and exempt Financial Advisers² (collectively referred to as “FAs”) and their representatives from most of the business conduct requirements in the FAA when they provide financial advisory services to: (i) institutional investors; (ii) related corporations; or (iii) connected persons.

15 FAs and their representatives are currently granted exemptions from particular business conduct³ requirements in the FAA in respect of financial advisory services provided to accredited and expert investors. The draft FA(A) Regulations imposes a requirement on FAs and their representatives to disclose to the accredited or expert investor any exemptions that apply.

16 Section 27 of the FAA requires FAs to have a reasonable basis when making recommendations. MAS will disapply the reasonable basis requirement in situations where a FA provides generally-circulated advice – that is, advice that is not intended to be targeted at specific persons. The draft FA(A) Regulations sets out the criteria for what constitutes generally-circulated advice.

17 The draft FA(A) Regulations also exempt FAs and their representatives from certain business conduct requirements⁴ of the FAA when providing financial advisory services to overseas investors, as defined in the Regulations.

² “Exempt financial advisers” refers to FAs exempt from holding a FA licence under section 23(1)(a) to (e) of the Financial Advisers Act.

³ Financial Advisers Regulation (“FAR”) 33 provides an exemption from FAA section 25, “Obligation to disclose product information to clients”, FAR 34 provides an exemption from FAA section 27, “Recommendations by licensees” and FAR 35 provides an exemption from FAA section 36, “Licensee to disclose certain interests in securities”.

⁴ The draft FA(A) Regulations provide an exemption from sections 25 to 29, 32 to 34 and 36 of the FAA.

INVITATION FOR COMMENTS

18 MAS would like to invite comments on the following:

(a) The draft Regulations and Guidelines pursuant to the SFA attached at *Annex 1 to 13*; and

(b) The draft FA(A) Regulations attached at *Annex 14*.