

## **RESPONSE TO FEEDBACK RECEIVED – POLICY CONSULTATION ON AMENDMENTS TO THE SECURITIES AND FUTURES ACT AND THE FINANCIAL ADVISERS ACT**

On 25 September 2006, MAS issued a policy consultation paper on two key proposals that were being considered for amendments to the Securities and Futures Act (“**SFA**”) and the Financial Advisers Act (“**FAA**”). The Annex sets out the list of respondents to the consultation paper. We have carefully considered all comments received in our policy deliberation.

We thank all respondents for their feedback. Comments of wider interest and our responses are set out below.

### **PART 1: REPRESENTATIVE NOTIFICATION FRAMEWORK**

#### **1.3: Proposed Notification Framework, and its Application to both Licensed Representatives and Exempt Representatives.**

##### **General feedback**

The industry had in the past commented that the current bifurcated framework creates an uneven playing field as the treatment of licensed representatives and exempt representatives is different. Under the current framework, licensed representatives are subject to MAS’ screening and the payment of various fees before being allowed to commence regulated activities. Exempt representatives are not subject to these requirements.

In response to industry feedback, MAS proposed the notification framework, which will apply to both currently licensed and exempt representatives. It will streamline and give greater consistency to our approach for representatives conducting regulated activities on behalf of their principals.

Under the proposed notification framework, the relevant principal will be required to notify MAS of the appointment of a proposed representative. The principal would also be required to certify to MAS that the proposed representative is fit and proper. The name of the proposed representative would then be entered on the public register within 7-14 days of MAS’ receipt of the relevant notification and certification, unless MAS has reason to consider that the proposed representative is not fit and proper. Once a representative’s name is on the public register he will be permitted to conduct regulated activities on behalf of the principal.

Respondents have generally expressed support for the proposed notification framework.

One of the features of the proposed notification framework is for MAS to retain the right to refuse to enter the name of a proposed representative into the public register where MAS has reason to consider that the proposed representative is not fit and proper. In this regard, two respondents have suggested that it would not be necessary for MAS to play a “gate-keeping” role by retaining this right to refuse on fit and proper grounds.

#### MAS’ Response

We note these comments. MAS would be implementing the notification framework as proposed. As MAS would no longer be the primary “gate-keeper” for fit and proper criteria for representatives, we expect financial institutions to play the major role in screening their representatives to ensure they are fit and proper. However, if MAS has information that a proposed representative is not fit and proper, MAS must be able to exercise the right to refuse to enter the name of a proposed representative into the public register. This is in the public interest.

#### **Timing Issues**

Some respondents proposed to shorten or eliminate the 7-14 day period between notifying MAS and the listing of the representative on the public register. For instance, some respondents were of the view that the 7-14 day period should be eliminated as the principal would have already provided the requisite fit and proper certification to MAS. Others suggested that MAS could issue “temporary licences” to the proposed representative after MAS is notified by the principal so that the representative can carry out regulated activities immediately.

#### MAS’ Response

The 7-14 day period is considerably shorter than the current licence processing time for representatives. In the majority of cases where there are either no adverse comments or minor adverse comments on the representative, we expect to inform principals of the outcome of the notification earlier.

MAS would rather not enter the name of a proposed representative into the public register if there is reason for MAS to believe that the proposed representative may not be fit and proper. This is a better practice than listing the proposed representative on the public register and subsequently having to revoke that status after he has dealt with consumers.

#### **Mode of Response by MAS**

Some respondents requested that MAS notify principals electronically when the names of proposed representatives are entered into the register, and also in instances where MAS refuses to enter the names into the register.

They expressed concern that the principal may not be notified in time if MAS' notification in this respect is only given in hardcopy.

#### MAS' Response

MAS would notify the principals electronically when the name of the proposed representative is entered into the register. In cases where there is adverse information on a proposed representative and MAS needs more time to review the information, MAS would also notify the principals electronically. In situations where upon review, MAS intends to refuse to enter the name of the proposed representative into the public register, a letter of such intent would be sent to the principal.

#### **MAS' Checks at Point of Notification**

Two respondents sought clarification on the type of checks and procedures that MAS would be carrying out during the 7-14 day period.

#### MAS' Response

During the 7-14 day period after the principal has submitted the notification, MAS would screen the names of proposed representatives against our internal supervisory databases. This is intended to complement the checks which have already been conducted by the principals. MAS would like to reiterate that we expect the principals to be primarily responsible for ensuring that their representatives are fit and proper.

#### **Representatives Covered Under the Notification Framework**

The proposed notification framework will apply to all representatives in the banking, insurance and capital markets sectors, who conduct regulated activities under the SFA and the FAA. This covers (i) licensed representatives who act for principals licensed under the SFA or the FAA; and (ii) exempt representatives who act for principals exempted under sections 99(1)(a), (b), (c) and (d) of the SFA, and sections 23(1)(a), (b), (c), (d) and (e) of the FAA.

Some respondents suggested that the notification framework should not apply to representatives dealing with non-retail investors under the SFA and the FAA. This would be consistent with the section 100(2) exemption under the FAA.

#### MAS' Response

Representatives dealing with non-retail investors are already granted exemptions from complying with certain business conduct requirements.

With regard to the exemption for specialised units serving high net worth individuals under section 100(2) of the FAA, MAS would like to clarify that these representatives would continue to remain exempted from certain conduct and examination requirements.

However, the *Guidelines on Fit and Proper Criteria*, which currently apply to representatives of specialised units serving high net worth individuals under section 100(2) of the FAA, would continue to apply. Given that the representative notification framework is the mechanism by which proposed representatives are screened for the fit and proper criteria, such representatives should also be subject to the representative notification framework.

As the representative notification framework will put in place a public register, MAS intends to remove the current statutory requirement for exempt financial advisers (“**FAs**”) to maintain a register of their representatives under regulation 38 of the FAA.

### **Change of Principals**

Under the notification framework, when there is a change of principal, the original principal would be required to notify MAS of the cessation of the representative’s employment with him. The new principal would be required to certify that the representative is fit and proper and notify MAS of its intention to allow the representative to carry out regulated activities on its behalf.

Some respondents highlighted that this is different from the current licensing framework, where an existing representative may commence regulated activities immediately upon joining another principal once the requisite form is submitted to MAS.

They expressed concerns that there may be unnecessary delays when there is a change of principal under the notification framework. In particular, delays may be caused by the former principal not submitting the cessation notice to MAS on a timely basis. Others highlighted that it is not an industry practice to conduct reference checks with a proposed representative’s current employer while he is still serving notice with that employer.

### **MAS’ Response**

Under the proposed framework, the new principal may notify MAS at any time *before* the proposed representative commences employment. The new principal need not wait for the former principal to submit a cessation notice to MAS before notifying MAS. The new principal’s notification, if accepted, will be effected once the former principal submits the cessation notice to MAS. The proposed two-step process of requiring both the cessation notice from the previous principal and the notification from the new principal will

ensure proper accountability of the representatives listed on the public register.

MAS expects the new principal to conduct a reference check (among other due diligence checks) before notifying MAS that it intends to allow a proposed representative to carry out regulated activities on its behalf. To minimise unnecessary delays that may arise during a change of principal, MAS proposes requiring all principals to notify MAS of the intended cessation of their representatives no later than *the next working day* after the effective date of cessation. This is in contrast to the current 14-day period (from effective date of cessation) which is given to licensees to notify MAS of the cessation. This will also ensure that the public register accurately reflects the status of a representative.

### **Fees**

Notification fees would be payable for notifications made to MAS.

Several respondents expressed concern about the potential impact of the proposed notification fees on business cost. Some also sought clarification on the details of the fee structure.

### **MAS' Response**

The quantum of fees to be imposed would be kept close to current application fees for licensing. MAS will conduct a separate consultation on the proposed fee structure under the representative notification framework in due course.

## **1.4(a): Proposal to Establish a Public Register of Representatives, and the Type of Information/Particulars of Representatives to be Reflected on the Public Register**

### **Information on Past Principals of Representatives**

In conjunction with the proposed notification framework, MAS proposed to establish a public register of representatives. This public register would reflect, *inter alia*, names of current principals on whose behalf the representatives act, and past principals on whose behalf the representative had acted in the preceding three years.

Some respondents suggested that the public register should reflect the names of the past principals on whose behalf the representatives had acted in the past five or ten years, instead of the proposed three years. Some respondents suggested that the public register provide information on the educational and professional qualifications of representatives.

Other respondents raised concerns that the information in the public register may encourage the poaching of representatives by competitors, particularly if the register contains information which hints at the experience and expertise of a representative. Another respondent suggested that it is unnecessary to include information on past principals on whose behalf the representative had acted, as that information can be obtained from the representative directly.

#### MAS' Response

We note these comments. The public register is intended to allow consumers to verify that they are dealing with regulated representatives and to aid principals in conducting probity and reference checks with past principals of the proposed representatives. It is not meant to replace the conduct of probity and reference checks with past principals, or to reflect the extent of the representative's experience in the industry.

Bearing in mind the rationale for the public register, MAS considers it sufficient to reflect the name(s) of past principal(s) on whose behalf a representative had acted in the preceding three-year period. The proposed types of information to be included in the public register are largely in line with those of other major jurisdictions.

#### **Formal Regulatory Actions and Adverse Records**

Under the notification framework, the public register would reflect any formal regulatory actions taken by MAS against representatives.

Some respondents asked that MAS clarify whether formal regulatory actions or adverse records on representatives would be published.

A few respondents also sought clarification on whether formal regulatory actions by MAS would be reflected in the public register indefinitely, in view of the national policy of rehabilitation of offenders.

Some respondents suggested that there is no need to publish prohibition orders ("**POs**") in the register as there are adequate measures to ensure that a prohibited representative does not engage in a regulated activity. Yet other respondents supported the publication of POs, with suggestions to have a short description of the reasons for the action(s) and to consider a separate register for representatives issued with POs.

#### MAS' Response

MAS would like to reiterate that only *formal regulatory actions*<sup>1</sup> taken by MAS would be reflected in the public register. Disciplinary actions taken by

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<sup>1</sup> MAS' approach for the publication of market conduct regulatory actions was set out in a press release dated 9 November 2004. The press release can be found at:

principals and reported to MAS would not be reflected in the public register (unless they result in formal regulatory actions taken by MAS), as these are confidential.

On the publication period of formal regulatory actions taken by MAS, MAS proposes that such information, which is published on the MAS Enforcement Actions webpage as well as the public register, be removed after five years. The exception is where the formal regulatory action extends for longer than five years, such as prohibition orders which are issued for more than five years. In such cases, details of the formal regulatory action would remain on MAS' website for the period the formal regulatory action is valid.

MAS views the publication of all formal regulatory actions taken by MAS (including POs) as an important complement to the proposed notification framework. Publication of POs on the public register is also consistent with MAS' general policy of publishing all formal market conduct regulatory actions. Reasons for the POs will be provided on the MAS Enforcement Actions webpage on MAS' website.

#### **1.4(b): Proposed Facilitative Measures for the Conduct of Fit and Proper Checks by Principals**

##### **Guidelines on Fit and Proper Criteria**

Currently, MAS sets out the fit and proper criteria applicable to all relevant persons in relation to the carrying out of any activities regulated by MAS under any written law.

Some respondents asked that MAS set out further guidance, in addition to the existing *Guidelines on Fit and Proper Criteria* ("**Guidelines**"), on the offences that would render a person not "fit and proper".

##### **MAS' Response**

MAS feels that it would not be appropriate to pre-determine the types of offences that would render a person not "fit and proper". Each assessment would depend on the facts and circumstances of the case. Nevertheless, we wish to highlight that the current Guidelines already set out detailed factors that a principal should consider in determining whether a representative is fit and proper.

## **Probity Checks by Principals**

Under the notification framework, principals play an important role in ensuring that only fit and proper individuals are named on the public register. Principals would be required to carry out reasonable checks before certifying a proposed representative as fit and proper.

Several respondents requested that MAS clarify the extent of “reasonable checks” expected from principals. While some respondents asked for detailed guidelines, others commented that such guidance should not be overly prescriptive.

### **MAS’ Response**

MAS recognises that there is concern about the extent of “reasonable checks” that the industry is expected to conduct. In response to the industry’s comments, MAS will be issuing guidance on the relevant checks that principals should conduct in due course.

## **Certification**

Two respondents commented that the fit and proper checks could only be carried out on a best endeavours basis, and that the standard certification statement that they would be required to submit to MAS should take this into account.

### **MAS’ Response**

MAS agrees that fit and proper checks can only be conducted on a best endeavours basis. There would be instances where a principal forms the view that a proposed representative is fit and proper even though there are adverse comments on the proposed representative. This may be the case where the adverse comment is minor in nature. To cater to such instances, there would be an option in the online notification form for principals to certify to MAS that the company, having completed its due diligence, it had noted the adverse comments but is of the view that the representative is fit and proper.

## **Liability on Principals and Representatives**

One respondent asked whether MAS would now look solely to the principals and not the representatives if the representative is found to be not “fit and proper”. The respondent also suggested that a defence of due diligence, similar to the defence set out in section 255 of the SFA in relation to statements made in prospectuses, should be made available to the principals in respect of their certification of the proposed representatives.



## MAS' Response

While MAS would hold the principal responsible for conducting sufficient and reasonable checks to satisfy itself and MAS that the representative is fit and proper, the representative is also responsible for satisfying MAS that he is a fit and proper person. In addition, the representative may be held liable if he falsely declares his particulars to the principal. MAS will consider the specific facts and circumstances of the case before deciding what regulatory action to take.

We agree that a defence of due diligence under the SFA and FAA should be made available to the principals in respect of their certification that the proposed representative is fit and proper. MAS will make the necessary amendments to the SFA and FAA in this regard.

### **1.5: Proposed Transitional Arrangements for Currently Exempt Representatives Migrating to the Proposed Notification Framework**

#### **Requirement for Current Exempt Principals to Notify and Certify that Existing Exempt Representatives are Fit and Proper**

The transitional arrangements would require exempt principals to certify to MAS that their existing representatives are fit and proper and submit the relevant notifications of intention to commence regulated activities. Thereafter, the names of these existing exempt representatives would be automatically reflected on the public register.

Some respondents commented that the proposed requirement for principals to provide a transitional notification and certification to MAS is not necessary to the extent that it suggests the need to carry out retrospective due diligence on existing representatives. Others suggested that no retrospective due diligence be required when exempt principals make the necessary certifications to MAS for existing representatives.

## MAS' Response

MAS does not expect the certification to MAS to be an overly-onerous exercise as all exempt principals should, pursuant to current requirements, already have conducted probity checks on their existing exempt representatives at the point of recruitment. We also expect that principals would have put in place sufficient controls to ensure that their representatives remain fit and proper during their term of employment.

However, we note the comments expressed by exempt principals. Consequently, we will work out an appropriate certification for existing representatives transiting to the proposed notification framework, taking

into account the proposals put forth by respondents. MAS will inform the industry of transitional arrangements in due course.

## **1.6: Application of the Proposed Notification Framework to Temporary Representatives under the SFA**

Currently, section 87A of the SFA provides that an individual may apply for a temporary representative's licence to carry out one or more regulated activities under the SFA. A temporary representative's licence is valid for a period of three months from the date of its issue, subject to a total maximum period of six months within a 24-month period. MAS proposed that the notification process, the public register, and the sanctions against provision of false information under the proposed notification framework be applied to temporary representatives under the SFA.

### **Scope of the Temporary Representative Regime**

Respondents suggested that the temporary representative regime be extended to representatives under the FAA. Respondents also sought clarification on whether representatives of financial institutions that are exempted from licensing under section 99 of the SFA would be included in the notification regime for temporary representatives.

#### **MAS' Response**

We wish to clarify that the temporary representative regime is extended to all institutions licensed to carry out capital markets activities under the SFA. This would include financial institutions exempt from licensing under sections 99(1)(a) – (e) of the SFA. As the expertise to conduct FA services is available in Singapore, we do not intend to extend the temporary representative regime to representatives under the FAA.

### **Notification Requirement**

Some respondents suggested that temporary representatives should not be subject to the notification process if the period of stay is short, for example, less than five business days.

#### **MAS' Response**

Licence holders will be required to certify that all proposed representatives, including proposed temporary representatives, meet the *Guidelines on Fit and Proper Criteria*, regardless of their length of stay in Singapore. MAS has no intention of allowing individuals who have not been certified as fit and proper to conduct any regulated activities, even if the period of stay is shorter than five business days.

## **Timing Issues**

A respondent suggested that the notification process for temporary representatives should take less than the 7-14 day period for all representatives. It was also suggested that principals be allowed to notify MAS of the proposed appointment in advance in order to reduce lag time.

### **MAS' Response**

Licence holders should plan ahead and notify MAS of proposed appointments early in order to avoid disruptions to their operations. If there is no reason for concern over an individual's proposed temporary representative appointment, and the individual meets the fit and proper criteria, the notification process for appointment of temporary representatives should be completed within seven days.

## **Fit and Proper Criteria**

A respondent sought clarification on whether the Guidelines on Fit and Proper Criteria apply to temporary representatives.

### **MAS' Response**

The *Guidelines on Fit and Proper Criteria* apply to all representatives, including temporary representatives. In addition, temporary representatives are subject to the *Guidelines on the Grant of a Temporary Representative's Licence* which MAS will be incorporating into the proposed representative notification framework.

## **Operational Issues**

Currently, a temporary representative's licence is granted for a period of three months. A holder of a temporary licence may submit an application for a further three-month period if more time is required to complete the work assignment. MAS may grant a temporary licence for a total maximum period of six months within a 24-month period.

A respondent suggested that principals be allowed to determine the period of validity of the temporary representative's status, while still being subject to the existing total maximum period of six months within a 24-month period. This is to accommodate temporary representatives who intend to visit Singapore more frequently but with each visit being shorter than three months.

### MAS' Response

MAS intends to keep the status quo when the notification framework applies to temporary representatives.

We would like to take this opportunity to remind the industry that the granting of a temporary representative's licence is intended for individuals residing outside Singapore who plan to conduct regulated activities in Singapore on a temporary basis. Favourable consideration will be given to applicants who possess specialised knowledge and expertise relevant to the capital markets. Individuals who intend to conduct regulated activities on a regular basis should apply for a capital markets services representative's licence (or notify MAS as a representative, under the representative notification framework) and comply with all relevant requirements.

### **Public Register**

The names of temporary representatives are intended to be entered on the public register upon successful notification, along with the names of all other representatives.

A respondent suggested that the list of temporary representatives be placed in a separate section of the public register instead.

### MAS' Response

MAS will be entering the names of temporary representatives on the public register together with that of all other representatives. To differentiate temporary representatives from other representatives on the public register, the status of temporary representatives will be reflected in the public register accordingly.

### **Conditions Imposed on Temporary Representatives**

Currently, temporary representatives are required to be accompanied at all times by a licensed representative, supervisor or a compliance officer when he is in contact with any investor, client or member of the public (other than an accredited investor, expert investor, or institutional investor, as defined in section 4A(1) of the SFA). MAS intends to keep the status quo when the notification framework becomes effective.

A respondent suggested that temporary representatives be allowed to meet investors, clients and members of the public without having to be accompanied by a licensed representative, supervisor or compliance officer.

## MAS' Response

Temporary representatives are not required to pass the relevant Capital Markets and Financial Advisory Services Examination (“**CMFAS**”) requirements. As such, they may not be aware of Singapore’s rules and regulations. MAS is therefore of the view that where retail clients are involved, temporary representatives should be accompanied by representatives, supervisors or compliance officers who are familiar with local rules and regulations. However, temporary representatives need not be accompanied when meeting accredited investors, expert investors or institutional investors, as defined under Section 4A(1) of the SFA.

### **1.7: Proposal to Introduce a Provisional Representative Scheme and the Application of the Proposed Notification Framework to Provisional Representatives**

In response to queries from the industry, MAS proposed introducing a provisional representative scheme, with a view to accommodating the relocation of experienced individuals currently or previously licensed, authorised or otherwise regulated in an overseas jurisdiction with a regulatory regime that is comparable to the regulatory regime in Singapore.

Provisional representatives would need to satisfy the criteria specified in the *Guidelines on Fit and Proper Criteria* but would be given a grace period to satisfy the examination requirements under the SFA *Notice on Minimum Entry and Examination Requirements for Representatives of Holders of Capital Markets Services Licence and Exempt Financial Institutions* and/or the FAA *Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers*.

#### **Notification process for the appointment of a provisional representative, and for the completion of examination requirements**

The provisional representative scheme was proposed with a view to accommodate the relocation of experienced individuals currently or previously licensed, authorised or otherwise regulated in an overseas jurisdiction with a regulatory regime that is comparable to the regulatory regime in Singapore. Provisional representatives will need to satisfy the criteria specified in the *Guidelines on Fit and Proper Criteria*, but would be given a grace period to satisfy the examination requirements under the SFA *Notice on Minimum Entry and Examination Requirements for Representatives of Holders of Capital Markets Services Licence and Exempt Financial Institutions* and/or the FAA *Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers*.

Some respondents sought clarification on whether provisional representatives would be listed on the public register, and whether a principal is required to notify MAS upon its provisional representative's completion of examination requirements.

#### MAS' Response

If notification for a provisional representative is successful, the provisional representative's name would be entered into the public register within 7–14 days of notification. Once a name is entered, the status "Provisional Representative" would be clearly indicated for a period of three months. When the provisional representative completes the examination requirements for a regulated activity, the principal should notify MAS and provide the necessary certification that the provisional representative has fulfilled the examination requirements. If this is done within the three-month period, the "Provisional" status of the representative would be changed to "Active" and reflected on the register. If the principal does not notify MAS of the completion of examination requirements at the end of the three month period, the representative would have to cease all regulated activities immediately.

#### **Timing of Notifications**

Some respondents suggested that licence holders be allowed to submit notifications for the appointments of provisional representatives to MAS in advance in order to reduce lag time.

#### MAS' Response

Once the due diligence process is completed, a principal may notify MAS of its intent to appoint a provisional representative in advance, before the appointee arrives in Singapore.

#### **Criteria for a Provisional Representative**

MAS would require a principal intending to appoint a provisional representative to certify to MAS, inter alia, that the provisional representative possesses at least five years of relevant experience and at least a Bachelor's degree or equivalent, or a professional qualification<sup>2</sup>.

Some respondents suggested that the five-year relevant experience requirement imposed as a prerequisite for a provisional representative be shortened to three years.

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<sup>2</sup> Acceptable professional qualifications include those listed in the exemptions for CMFAS Product Knowledge and Analysis Papers.

### MAS' Response

MAS has considered the suggestion, and agrees to shorten the experience requirement to three years.

### **Comparable Regulatory Regime**

Some respondents sought clarification on the definition of "comparable regulatory regime" and asked whether MAS will publish a list of jurisdictions it regards as having a comparable regulatory regime with that of Singapore.

### MAS' Response

MAS will not be publishing a list of jurisdictions regarded as having a comparable regulatory regime with that of Singapore. Generally, MAS would regard a regulatory regime with rules and regulations similar to that of Singapore as a comparable regulatory regime.

### **Fit and Proper Checks**

Respondents sought clarification on whether principals would be expected to certify that proposed provisional representatives, who would be relocating to Singapore from overseas jurisdictions, are fit and proper. They also sought clarification on the extent of the reasonable checks that would be expected of principals. Respondents raised concerns on the availability of information from law enforcement agencies and foreign regulators.

### MAS' Response

MAS recognises that there is genuine concern on the extent of "reasonable checks" that the industry would be expected to conduct. MAS will be issuing guidance on the relevant checks that principals should conduct in due course.

### **Examination Requirements**

One respondent suggested that the range of acceptable qualifications for a provisional representative should be tightened and the focus be on those for practitioners. This is because there is an increasing number of courses on the subject of financial planning, wealth management, etc., that are not aimed at the delivery of practical advice to a client. Another respondent suggested that representatives from overseas jurisdictions with regulatory regimes comparable to Singapore should only need to sit for exams relating to rules and regulations, and be exempted from product knowledge modules.

## MAS' Response

Exemptions from product knowledge examination requirements are provided for in the SFA *Notice on Minimum Entry and Examination Requirements for Representatives of Holders of Capital Markets Services Licence and Exempt Financial Institutions* and the FAA *Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers*. Given that the grace period for provisional representatives is capped at three months, and that MAS would only allow representatives that are currently or previously regulated in other overseas jurisdictions with a regulatory regime that is comparable to that of Singapore, we are of the view that there is no need to set out separate qualification requirements for provisional representatives.

### **Grace Period for the Completion of Examination Requirements**

A provisional representative would be given a grace period of three months to satisfy the examination requirements. This grace period is not extendable.

A respondent suggested that the grace period for completion of examination requirements be increased to six months.

## MAS' Response

MAS is of the view that the three months grace period is reasonable. As examinations are held regularly, there should be sufficient time to retake examinations if necessary. The regime provides for a concession in terms of CMFAS examination requirements on rules and regulations to facilitate the relocation of experienced professionals to Singapore. However, MAS remains of the view that the examination requirements on rules and regulations are essential and should be completed as early as possible, to ensure that the representative is cognisant of the local rules and regulations.

### **Clientele of Provisional Representatives**

The principal would be required to furnish an undertaking to MAS that it would be fully responsible for the activities and conduct of the provisional representative, and that the provisional representative would only be allowed to deal with a client who is an accredited, expert or institutional investor, as defined in section 4A(1) of the SFA and regulation 2(1) of the Financial Advisers Regulations (Rg 2).

Some respondents suggested that provisional representatives be allowed to deal with retail clients, while other respondents agreed that provisional representatives should not deal with retail investors until they have completed examination requirements.



## MAS' Response

MAS has considered the suggestions, and agrees that provisional representatives should be allowed to deal with retail clients. However, as a mitigating measure, a provisional representative would be required to be accompanied either by a supervisor, a representative, a compliance officer, or a director of the principal company, when dealing with retail clients.

## **PART 2: EMERGENCY POWERS OF MAS**

### **2.2: Proposal to Give MAS the Power to Appoint Adviser**

We proposed to give MAS the power, in specified circumstances, to appoint a person to advise an approved exchange ("**AE**") or designated clearing house ("**DCH**") in the conduct of its business.

Currently, MAS can exercise its emergency powers to take action to restore public confidence in situations where an AE or DCH is insolvent, likely to become insolvent, or has otherwise shown signs of mismanagement such that the AE or DCH is operating to the detriment of MAS' regulatory objectives. Introducing the power to appoint an adviser to an AE or DCH in the same circumstances would give the AE or DCH the benefit of leveraging on independent expertise. It would also provide a measure of public confidence in the management of the AE or DCH.

One respondent suggested clarifying the role of the adviser specifically, including the scope of advice, while another respondent suggested specifying the criteria in the selection of an adviser, and how the cost of retaining the adviser is to be borne.

One other respondent suggested a time period to be set out for which the adviser would advise the AE or DCH, and also raised the possibility of a review report at the end of the time period, to be published if necessary or desirable.

## MAS' response

The selection of an adviser will depend on the intended function of the adviser. Generally, MAS would select an adviser who is an expert in the field concerned, and who is able to provide independent, objective advice. The cost and scope of work would be determined by MAS in consultation with the adviser in the course of his appointment. The cost would be borne by the AE or DCH.

We agree that setting out a time period for which an adviser would advise an AE or DCH may be useful. We may do so when an adviser is appointed,

under the terms of appointment. Subsequently, we would consider publishing a review report, where appropriate.

The proposed power is in alignment with the equivalent provision in the Banking Act.

### **2.3: Proposal to expand Section 143 and Section 144 of the SFA to provide MAS with information-gathering powers**

Section 143 of the SFA allows MAS to require a person to disclose information in relation to dealing in securities where MAS considers it necessary, *inter alia*, to prohibit trading in particular securities. Section 144 of the SFA provides similar powers in relation to trading in futures contracts, where MAS may direct an AE to take action in an emergency. However, information-gathering powers for other contemplated emergency situations have not been provided for.

We proposed expanding section 143 and section 144 of the SFA to provide information-gathering powers for all circumstances where MAS exercises its emergency powers, namely, section 23, section 34 and section 81 of the SFA.

One respondent queried whether the expansion of powers overlaps with section 152, section 163 and section 164 of the SFA, as these provisions essentially grant MAS powers to obtain information.

#### MAS' response

We note that there may be some overlap in function with the named sections. Section 152 pertains to MAS' broader power to conduct investigations and obtain assistance or information from persons, while section 163 and section 164 pertain to MAS' powers, for the purpose of an investigation, to order or seize books from persons. Our policy intent is to provide for administrative flexibility to obtain information for the purposes of carrying out our regulatory responsibilities in situations other than an investigation.

**MONETARY AUTHORITY OF SINGAPORE  
11 OCTOBER 2007**

## **ANNEX**

### **LIST OF RESPONDENTS TO POLICY CONSULTATION ON AMENDMENTS TO THE SFA AND THE FAA**

- Allen & Gledhill
- Association of Financial Advisers Singapore
- AXA Asia Pacific Holdings Ltd
- Citibank N.A., Singapore Branch
- DBS Vickers Securities (Singapore) Pte Ltd
- Deutsche Bank AG
- Drew & Napier LLC
- Financial Service Managers Association
- First Advantage Pte Ltd
- HSBC Insurance (Singapore) Pte. Limited
- InSite Equity Pte Ltd
- Institute of Certified Public Accountants of Singapore
- Insurance and Financial Practitioners Association of Singapore
- KhattarWong
- Life Insurance Association
- Lion Capital Management Limited
- Macquarie Securities (Singapore) Pte Limited
- Man Financial (S) Pte Ltd
- NTUC Income Insurance Co-operative Ltd
- OCBC Bank
- Ong First Tradition Pte Ltd
- Phillip Securities Pte Ltd
- PromiseLand Independent Pte Ltd
- Mr Roy Abraham Varghese
- Securities Association of Singapore
- Singapore Exchange
- The Association of Banks in Singapore
- The Law Society of Singapore
- The Society of Remisiers (Singapore)
- United Overseas Bank Limited
- UBS AG
- WongPartnership