

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

On 5 December 2006, MAS issued a second policy consultation paper in relation to proposed amendments to the Securities and Futures Act (“**SFA**”) and the Financial Advisers Act (“**FAA**”). The proposals covered five broad areas:

- (i) Markets and clearing houses;
- (ii) Licensing and business conduct rules;
- (iii) Fidelity funds of securities and futures exchanges;
- (iv) Market misconduct enforcement framework; and
- (v) Regulation of offers of investments.

We have carefully considered all comments received in our policy deliberation. We thank all respondents for their comments. Comments of wider interest together with MAS’ responses are set out below.

CHAPTER 1: MARKETS AND CLEARING HOUSES

Section A: Position Limits and Trading Limits

1.1 Proposal to revise position limits and trading limits provisions

Section 31 of the SFA sets out the statutory parameters relating to limits on the positions that a person may accumulate (“**position limits**”) and the amount of trading that a person may undertake (“**trading limits**”), on a futures contract traded on the futures market of an approved exchange (“**AE**”).

We proposed to revise the position limits and trading limits provisions under section 31 of the SFA. This is to place the primary responsibility for the setting of position limits on the AE, and to remove statutory liability for the breach of position limits and trading limits. This is also in line with the existing approach under Section 61 of the SFA, where designated clearing houses (“**DCH**”)s are required to ensure that they adequately manage their risks. Under the proposed amendments, MAS would only oversee the framework for the setting and review of position limits, to ensure that position limits are applied appropriately.

Two respondents requested that MAS consider whether statutory liability would still be appropriate in cases where an individual may trade over the position limit, especially when the over-trading is deliberate and of a scale that is large enough to pose systemic concerns if the individual was unable to fulfill his obligations under those trades.

Another respondent requested for clarification on whether there will be changes to the responsibility and potential liability of a member of an AE in ensuring compliance with trading limits by their customers.

MAS' response

We agree to retain statutory liability for breach of position limits set by an AE, where such breaches are intentional. This is to complement but will not supplant the AE's responsibility to enforce its position limits.

For the revisions proposed, there is no change to the responsibility and potential liability of members of an approved exchange under the SFA.

Section B: Designated Clearing Houses' Handling of Customers' Money

1.2: Proposal to provide greater clarity on the required and permissible handling and bookkeeping of customers' money and assets

The segregation of customers' money from other monies is a fundamental risk management measure in relation to the operation of a DCH. To this end, Section 62 of the SFA currently sets out the obligation of a DCH which holds money or assets deposited with it in respect of contracts of customers of its members, such as margins (collectively referred to as "**customers' money and assets**").

To provide greater clarity on the required and permissible handling and bookkeeping of customers' money and assets by a DCH, we proposed amending section 62(2) of the SFA.

One respondent commented that in some jurisdictions, a customer is allowed to elect for non-segregation of funds. This may lead to a conflict of laws issue.

MAS' response

Customers' funds of a member in Singapore are required under section 62 of the SFA to be declared as such and have to be segregated from house funds. Customers in overseas jurisdictions are not prevented from electing to commingle their funds with their brokers where it is so allowed.

Where a foreign customer has elected for non-segregation of funds with house money, his broker would report these funds to the Singapore clearing member as house funds of the foreign broker. The Singapore clearing member, receiving the funds, would then report these funds to the DCH in

accordance with section 62 of the SFA. The foreign customer's right to elect for non-segregation of funds with his broker is preserved as the obligation to declare the source of funds to the DCH under section 62 only applies to the Singapore clearing member.

Section C: Permissible Use of Customers; Money and Assets In the Event of Default

1.3: Proposal to provide certainty on the circumstances under which a DCH is allowed to apply customers' money and assets

We proposed amending the conditions in section 63 of the SFA to provide greater certainty on the circumstances under which a DCH is allowed to apply customers' money and assets to meet the obligations of a defaulting member. In particular, we proposed that a DCH may proceed to use customers' money and assets if (i) it had exhausted the defaulting member's available money and assets; **or** (ii) failure to use such customers' money and assets may jeopardize the DCH's financial integrity.

One respondent commented that it should be made known to customers that their money and assets kept with a particular DCH are subject to such conditions.

Two respondents suggested that permitting the use of customers' money and assets based on just one of the two conditions may be too broad to oblige the DCH to look first to the clearing member's available money and assets before looking to customers' money and assets.

MAS' response

We agree that the conditions in section 63 of the SFA should be made known to customers. We will amend section 63 of the SFA to require a DCH to disclose the circumstances under which it may use customers' money and assets to meet the obligations of defaulting members.

We intend to retain the use of the conjunction "or" between the two conditions to provide flexibility to the DCH in situations of grave systemic concern. It is intended that ordinarily, the DCH should take all reasonable steps to ensure that it has exhausted the defaulting member's available money and assets before it may rely on the flexibility afforded by the second condition. We will clarify this in the *Guidelines on Regulation of Clearing Facilities*.

CHAPTER 2: LICENSING AND BUSINESS CONDUCT RULES

Section A: Appointment of Directors by Holders of Capital Markets Services (“CMS”) Licences and Financial Advisers’ (“FA”) Licences

2.1(a): Proposal to clarify when MAS’ approval is required for licence holders that operate in Singapore as branches of foreign companies

2.1(b): Proposal to require licence holders to obtain prior approval for material changes in the nature of their directors’ appointments

The proposal was to clarify that licence holders operating in Singapore as branches of foreign companies do not need MAS’ approval to appoint non-resident directors who do not have responsibility for the operations of the Singapore branch. In addition, we proposed that licence holders seek MAS’ prior approval for material changes in the nature of their directors’ appointment.

Respondents suggested that only non-resident directors who have direct responsibility for the operations of the Singapore branch be subject to MAS’ prior approval. Respondents also sought clarification as to how MAS would determine if a director was responsible for the operations of the Singapore branch.

MAS’ Response

The proposal sought to clarify that the current requirement to seek MAS’ approval for the appointment of directors is waived for directors of CMS licence holders operating as branches in Singapore who:

- (i) are not resident in Singapore; and
- (ii) do not have direct or primary responsibility over the Singapore branch’s operations.

MAS will leave it to the board of directors to determine if a director has direct or primary responsibility for the operations of the Singapore branch. When in doubt, an application for approval may be submitted.

Section B: Consolidation of Business Conduct Rules

2.2: Proposal to consolidate the business conduct rules for capital market intermediaries and financial advisers in subsidiary legislation

To provide greater flexibility in adapting business conduct rules to market development and industry needs, MAS is studying the possibility of

consolidating certain business conduct rules in the SFA and the FAA in subsidiary legislation. The substance of MAS' requirements will remain unchanged. This proposal would be consistent with the practice in other jurisdictions.

Respondents were supportive of the proposal to consolidate the business conduct rules in subsidiary legislation¹ and welcomed the opportunity to comment on the drafting of the proposed legislative amendments.

MAS' Response

The proposed legislative amendments to give effect to the consolidation of business conduct rules will be made available for public consultation.

Section C: Licensing Exemption for Securities Proprietary Traders

2.3: Proposal to exempt all proprietary traders from existing licensing requirements and the requirements under the proposed notification framework

We proposed to exempt proprietary traders in the securities market from existing licensing requirements and requirements under the proposed representative notification framework. This is because proprietary traders do not service customers, and trade using their own or their company's capital. Proprietary traders will however continue to be subject to market misconduct provisions in Part XII of the SFA.

Some respondents have asked MAS to clarify what is considered proprietary trading in securities. The respondents pointed out that unlike futures trading, securities trading may be carried out through a securities exchange or over-the-counter ("**OTC**").

Respondents also sought further clarification on whether the exemption would apply to proprietary trading of leveraged foreign exchange, OTC securities, and commodity futures when regulation of commodity futures is transferred to the SFA.

MAS' Response

The exemption would apply to proprietary traders who trade on their own account, the account of their principal, or the account of a corporation related to their principal. The exemption would not apply to proprietary traders who trade on the accounts of related corporations that are maintained for the benefit of third-party investors as they would be using the capital of third-party investors.

¹ The Securities and Futures (Licensing and Conduct of Business) Regulations

In addition, proprietary traders who wish to rely on this exemption must not:

- (i) be involved in brokering activities for customers' accounts;
- (ii) have access to customers' trades and order information; and
- (iii) be in a position to control or affect the order of execution of customers' orders.

The principal must also demonstrate adherence to the priority of customers' orders at all times.

For securities transacted on a securities exchange, the exemption will apply to proprietary traders who meet the above criteria. For securities that are not transacted on a securities exchange, the exemption will apply if, in addition to the above conditions, the counterparty to the trade is an institutional investor or a foreign financial institution.

The exemption will also apply to proprietary traders who trade in leveraged foreign exchange contracts. Proprietary trading of commodities futures will continue to be exempt from licensing under the SFA when the regulation of commodities futures is transferred to the SFA.

Section D: Registration of Representative Offices

2.4: Proposed adoption of a registration regime for the setting up of Representative Offices in Singapore

We proposed adopting a registration regime for representative offices ("RO") under the SFA. This is to allow foreign entities that are exploring the viability of setting up a regulated entity in Singapore to conduct limited activities (such as collection of information on companies, economies and stock markets for a specified period) under a RO registered with MAS.

Respondents sought clarification on the activities that an RO would be allowed to conduct, the length of the initial registration period and the admission and on-going requirements for ROs. A respondent also asked whether foreign entities that do not have intention to set up a regulated entity in Singapore would be allowed to register an RO.

MAS' Response

ROs are generally set up in Singapore by established and reputable international financial groups who wish to have a presence in Singapore without incorporating a subsidiary or branch. They may carry out activities such as conducting research and collecting information on companies, economies and stock markets of Singapore and other countries in the region for the company's internal use. However, ROs are not permitted to engage in regulated activities under the SFA and the FAA.

New ROs will be registered for an initial period of up to three years. Prospective applicants are encouraged to meet with MAS before submitting their RO application. They are expected to have plans to apply for a CMS or FA licence in Singapore when meeting with MAS.

When the legislation is effected, a general description of the permitted activities of ROs, the admission criteria and registration forms will be provided on the MAS website. All ROs will be listed on MAS' website.

Section E: Licensing Exemption for Third-Party Foreign Research Houses

2.5: Proposal to grant licensing exemption to third-party foreign research houses to distribute their research reports in Singapore

The proposal was to grant licensing exemption to third-party foreign research houses for them to distribute their research reports in Singapore subject to conditions that:

- (i) restrict the distribution of the research reports to accredited, expert or institutional investors;
- (ii) require the foreign research house to be subject to proper supervision by its home regulator;
- (iii) require the FA in Singapore to take full legal responsibility for the contents of the research reports ("**legal responsibility condition**");
- (iv) disallow contact details of the third-party foreign research house or its analysts in the research reports; and
- (v) restrict the research reports to those concerning non-Singapore listed securities.

Respondents welcomed the proposal as it would allow investors in Singapore to benefit from the expertise of reputable foreign research houses. Several respondents suggested extending the proposed exemption to research reports covering futures contracts, commodities and all Singapore securities.

There were mixed views on the legal responsibility condition. Several respondents suggested that given the restriction of the distribution to accredited, expert or institutional investors, the FA in Singapore should not be made to take legal responsibility for the contents of the research reports. Other respondents suggested extending the distribution of the research reports to retail investors given that the FA in Singapore would be required to accept legal responsibility for the contents of the research reports.

In relation to the condition that would disallow contact details of the third-party foreign research house or its analysts, respondents pointed out that

most research reports have a standard format for distribution worldwide. It would therefore be costly to reformat the research reports by deleting the contact details specifically for use in Singapore.

Several respondents also commented that the condition requiring the foreign research house to be subject to proper supervision by its home regulator may not be practicable as it would depend on the regulatory regime in the home jurisdiction.

MAS' Response

MAS agrees to extend the proposed exemption for research reports to all investment products. This would streamline the regulatory regime regarding research reports in respect of securities, futures, life policies and structured deposits.

To rationalise the regulatory framework for distribution of foreign research reports, the exemption would apply to research arrangements with all foreign research houses. This would include foreign related corporations of the FA in Singapore, which currently require MAS' approval under paragraph 11 of the First Schedule to the FAA. As such, the exemption will not be restricted to only third-party foreign research houses as initially proposed by MAS.

Where research reports are distributed to retail investors, MAS would impose the legal responsibility condition as proposed in the consultation paper. We will give the FA in Singapore the flexibility of deciding whether to take full legal responsibility for the contents of the research reports or joint and several legal responsibility with the foreign research house. For distribution of research reports to accredited, expert or institutional investors, we would not require the legal responsibility condition as long as the FA in Singapore takes reasonable steps to ensure that the distribution of such research reports is restricted to those persons. This approach is consistent with the philosophy that accredited, expert and institutional investors are better able to protect their own interests.

MAS acknowledges concerns of FAs regarding the additional costs for complying with the proposed condition that research reports do not contain the contact details of the foreign research house or its analysts. In view of the comments received, we will replace the proposed condition with a requirement for research reports to have a statement to direct recipients of the reports to contact the FA in Singapore should they have queries on the reports. We wish to reiterate that the proposed exemption is not intended to facilitate active solicitation of Singapore clients by foreign research houses and their analysts.

Research activities may not be regulated in all jurisdictions. The condition for the foreign research house to be subject to proper supervision by its

home regulator would apply only if it is a requirement in the home jurisdiction.

CHAPTER 3: FIDELITY FUNDS OF SECURITIES AND FUTURES EXCHANGES

Section A: Transactions on Overseas Securities Exchanges

3.1 Proposal for the exchange fidelity fund to cover only losses arising from trades carried out on the Approved Exchange or otherwise routed to the Approved Exchange via cross-border exchange-to-exchange trading links

We had proposed to clarify that the exchange fidelity fund will only cover losses arising from trades that are carried out on an AE in Singapore, or from trades carried out on an overseas exchange that are routed to the AE in Singapore via cross-border exchange-to-exchange trading links.

The fidelity fund will not cover trades carried out on any other market. It will also not cover losses arising from trades that are routed to a clearing facility for an AE via a clearing link with another clearing facility.

One respondent requested for clarification whether trades need to be routed to the AE, and whether trades for which instructions had been issued for the routing, but had not yet been routed (possibly via a mutual offset system) would qualify for coverage under the exchange fidelity fund.

One respondent also suggested that an AE should be required to disclose to investors which transactions are or are not covered by the fidelity fund.

MAS' response

In the case of exchange-to-exchange trading links, once orders routed from an overseas exchange have been executed on the AE, such executed transactions would be covered by the exchange fidelity fund. The mutual offset system is a clearing link between clearing houses, where trades are routed from an overseas clearing house to a local clearing house for clearing or settlement. As the exchange fidelity fund is set up and administered by an AE, the coverage would not extend to clearing houses.

An AE is required to disclose information on the fidelity fund to investors upon request, or to publish such information in a manner accessible to investors, under Regulation 13(5) of the *Securities and Futures (Markets) Regulations 2005*.

CHAPTER 4: MARKET MISCONDUCT

Section A: Corporate Derivative Liability

4.1: Proposal to make a company liable when the company has failed to take reasonable steps to prevent market misconduct by its employees

Under current law, a company may not be liable for market misconduct committed by its employees whilst trading on the company's behalf unless management is involved in the misconduct. MAS proposed to additionally make a company liable where the company has failed to take "reasonable steps" to prevent the misconduct.

Several respondents raised the concern that the imposition of such an approach may be onerous and difficult to apply as it is subjective. They sought clarification as to what would be considered "reasonable steps". Several respondents also suggested retaining the current "Chinese walls" defence for insider trading as removing it would create uncertainty for financial institutions which currently had such measures in place.

Other respondents were concerned about the practical repercussions in making a company criminally liable for the misconduct of their employees as this could give rise to severe reputational damage. One respondent commented that this would also have an adverse impact on shareholders when the company is made to pay civil penalties or criminal fines.

MAS' Response

We note the concerns that the use of the term "reasonable steps" may create uncertainty given its subjectivity. We therefore propose to utilise existing language within the SFA to make a company liable for the misconduct of its employees trading on its behalf where the misconduct was committed with the consent, connivance or is *attributable to any neglect* on the part of the company. To provide certainty on what would constitute neglect on the part of the company, the draft legislation will outline various factors the court should take into account in determining liability, including whether the company has established adequate policies and procedures for the purposes of preventing and detecting market misconduct. The "Chinese walls" defence to insider trading liability will also be retained in its current form to maintain certainty.

We also note the concern that making a company criminally liable for the market misconduct of its employees may have severe repercussions for the company. We therefore propose to impose only civil liability and civil penalty liability where the misconduct is attributable to neglect on the part of the company. Criminal liability would be imposed only where the company had consented to or connived with the misconduct.

Finally, we would like to highlight that imposing such derivative liability will encourage companies to put in place policies and procedures to prevent its assets from being misused. This benefits the company and ultimately, its shareholders.

Section B: Disgorgement by Persons who Benefit from Contravening Trades Conducted on their Behalf

4.2: Proposal to empower the courts to order a third party who has benefited from illegal trades to disgorge the gains

When trades in contravention of Part XII of the SFA are conducted by a trader on behalf of an innocent third party, this third party may make profits or avoid losses as a result of such trades. Presently, such a third party is not liable to disgorge the profits or losses avoided even though they result from market abuse.

MAS proposed to empower the court to order such a third party to disgorge his gains to affected investors. MAS also proposed that disgorgement would not be ordered if the third party has used the money in such a way that would make it unfair to compel him to disgorge it. Several respondents were concerned that it was unclear how this would be determined. One respondent also suggested a limitation period for such disgorgement orders.

MAS' Response

The draft legislation will explicitly incorporate a defence similar to the "change of position" defence found in the law of restitution. The principles of such a defence are well established and the subject of considerable jurisprudence.

The draft legislation will also include a limitation period similar to the one found under section 234 of the SFA for civil liability actions. That is, the application for an order of disgorgement must take place no later than six years from the date of the contravention.

Section C: Disqualification from Acting as a Director or being Involved in the Management of a Company

4.3: Proposal to give the courts the discretionary power to order disqualification where a person has been convicted of or found to be liable for a civil penalty for any contraventions under Part XII of the SFA

Currently, the Companies Act (Cap. 50) ("**CA**") provides that a person can

be disqualified from acting as a director or being involved in the management of a company (“**disqualification**”) upon criminal conviction of certain offences. It is unclear whether this extends to criminal convictions for contraventions under Part XII of the SFA (“**Part XII contraventions**”). There is also no provision for the court to order disqualification after it has made an order of civil penalty under section 232 of the SFA.

MAS proposes to give the court the discretionary power to order disqualification where a person has been convicted of or found to be liable for a civil penalty for any Part XII contravention. This will be done by way of an amendment to the CA.

One respondent commented that disqualification should be imposed only for serious offences, and that not all Part XII contraventions are serious enough to warrant disqualification.

MAS’ Response

We view all Part XII contraventions to be serious. This is reflected in the severe criminal and civil penalties prescribed for such offences. Furthermore, disqualification will lie within the discretion of the court and should be imposed only in deserving cases that call into question the suitability of an individual to act as a director or officer of a company.

CHAPTER 5: OFFERS OF INVESTMENTS

Section A: New Prospectus Exemption for Offers Made to Persons Who Satisfy the “Knowledge Test”

5.1: Proposal to introduce a new prospectus exemption for offers of securities made to persons who satisfy the proposed “knowledge test”

In response to the industry’s request for MAS to expand the current range of prospectus exemptions to facilitate the development of Singapore’s capital markets, we proposed introducing a new “knowledge test” exemption for investors possessing a certain level of financial expertise and who are sufficiently sophisticated to protect their own interests.

To qualify, the investor must have fulfilled the following objective and subjective conditions:

Objective condition: Meet two of the following three criteria:

- (i) have carried out at least 40 transactions, totalling at least S\$200,000 in value, on securities markets in the preceding 12 months;

- (ii) have a securities portfolio size of at least S\$300,000, excluding investments using CPF monies; and
- (iii) have at least three years experience in a professional position which requires knowledge of securities investment or finance or such other relevant experience as may be prescribed by MAS.

Subjective condition: Be assessed by the securities dealer or financial adviser making the offer to be able to properly evaluate the risks, merits and value of the securities offered, in light of the knowledge and experience gained from the objective condition.

We had also proposed imposing a statutory obligation on securities dealers and financial advisers to address concerns that they might take a liberal interpretation of the objective condition when assessing the suitability of prospective investors. In this regard, relying solely on self-declarations from investors would not be sufficient.

While many respondents supported the proposal to introduce the “knowledge test” exemption, they raised concerns about the proposed objective and subjective conditions.

(a) Objective condition

Many respondents called for a relaxation of the objective condition. On the other hand, one respondent commented that it was too low to ensure that an individual had sufficient knowledge and skill to invest in securities. Several respondents noted that the proposed frequency and quantum of transactions were not entirely reflective of those undertaken by knowledgeable investors as some investors carried out larger quantity low frequency trades rather than smaller more frequent trades.

Several respondents sought guidance on the criterion relating to “experience in a professional position which requires knowledge of securities investment or finance”. A few respondents also asked if satisfying the objective condition was a one-off exercise or had to be conducted each time an offer is made. One respondent requested for clarification on the term “transactions”, in particular, whether it would cover both sales and purchases and would include transactions using CPF/SRS funds.

(b) Subjective condition

Many respondents did not agree with the requirement for the financial intermediary to assess and ascertain the investor’s ability to evaluate the risks, merits and value of the investment. One respondent commented that such an assessment was dependent on the individual financial

intermediary's subjective judgement. This might give rise to different standards. Several respondents felt that condition was too onerous and would be costly to comply with. Two respondents questioned its effectiveness given that the financial intermediary did not have any real means of verifying the authenticity and completeness of the information provided. A number of respondents were concerned with, and sought clarifications on how "reasonable grounds" ought to be determined and what would constitute "reasonable measures" to verify investors' status.

Most of the respondents disagreed with the proposal to impose statutory obligations on financial intermediaries, with one respondent noting that such potential liability was likely to deter banks from using the proposed exemption. While most of the financial intermediaries which responded suggested that a self-declaration by the investor be deemed sufficient, a few respondents favored the setting up of a central register where investors could self-declare their status. Nevertheless, as acknowledged by one respondent, such a central register could present implementation challenges, e.g. who should maintain and be responsible for the register.

MAS' Response

The "knowledge test" exemption was proposed as an additional safe harbour to cater to persons who did not have the requisite net worth or income to qualify as an accredited investor or the financial resources to engage in large trades, but yet possessed the knowledge to evaluate the merits and risks of an investment without a prospectus.

Whether a person has sufficient know-how has to be considered in the context of the securities being offered. For example, an individual may qualify for the objective condition based on his knowledge and experience in unit trusts investments. This same individual however may not possess sufficient know-how to invest in commodity-linked notes. Requiring a professional adviser to provide a subjective judgement on the relevance of the investor's knowledge and abilities is therefore pertinent.

We remain convinced that the "knowledge test" exemption should have both the objective and the subjective conditions. To do away with either set of conditions would render the exemption ineffective in meeting its objectives.

Nevertheless, we note the feedback received from market practitioners. The sheer volume of requests for clarifications is an indication of the implementation difficulties that need to be addressed. In this regard, we envisage that MAS would have to spend a disproportionate amount of time issuing guidelines and policy statements. Furthermore, the legal liability, while necessary, might dissuade financial intermediaries from using the "knowledge test" exemption.

After careful consideration, we have decided not to proceed with the “knowledge test” exemption. Instead, *we will lower the minimum investment amount required for prospectus exemption from the current S\$200,000 to S\$100,000.* We consider a person who is willing to invest \$100,000 or more in a single transaction as someone who possesses or has access to sufficient financial know-how to be able to protect his own interests.

Section B: Notification of Changes in Substantial Shareholdings

5.2: Proposal to rationalise the substantial shareholdings notification requirements currently residing in both the Companies Act (CA) and the SFA, remove the requirement for substantial shareholders to notify the SGX and make it a legal requirement for the listed company to notify investors

Currently, requirements relating to notification of changes in substantial shareholdings are set out in the CA, the SFA and the SGX Listing Rules. We had proposed to streamline the notification process by:

- (i) migrating the requirement for substantial shareholders to notify the listed company under the CA to the SFA such that one single set of the notification requirements under the SFA applies;
- (ii) removing the requirement for substantial shareholders to notify the SGX under the SFA; and
- (iii) making it a legal requirement under the SFA for the listed company to notify the public.

All respondents were supportive of the proposal. Respondents generally agreed that consolidating notification requirements under the SFA and removing the requirement for the substantial shareholder to notify SGX in addition to the company would provide clarity and expedite compliance.

Accordingly, the provisions in sections 81 to 92 of Division 4 of Part IV of the CA on the disclosure of substantial shareholdings will be moved to the SFA with the following modifications:

- (i) the draft legislation will extend the requirement for a trustee to notify the beneficial owner of any change in interests to all cases (and not only in the case where the beneficial owner is a non-resident as set out under section 86 of the CA);
- (ii) a new provision will be introduced to also put the onus on the beneficial owner to ensure that he will be notified of any changes in interests; and
- (iii) the draft legislation will provide that in a case where shares are not sold in accordance with an order of the Court, MAS shall be

able to apply to the Court for further direction in respect of the unsold shares (as opposed to the current section 92 of the CA where the unsold shares shall vest in the Registrar).

The respondents also gave comments on specific issues. The significant comments are as follows:

(a) In relation to the requirement for listed companies to announce the change in substantial shareholdings, several respondents asked if MAS will be prescribing any timeline for the company to make the announcement.

MAS' response

We will prescribe a notification period. Changes in substantial shareholdings constitute important information which should be released to the market immediately. In this regard, the SGX Listing Rules currently requires listed companies to immediately announce the change upon receipt of notification. In practice, we understand that companies generally take up to a day to make the announcement. Hence, we consider a one-day timeline to be reasonable and will require the listed company to announce the information as soon as possible and in any case, no later than the end of the following business day upon receipt of the notification.

(b) One respondent was of the view that a standardised form should be used in order to promote consistency in the reporting of substantial shareholdings changes.

MAS' Response

We agree with the respondent. The use of a standard form will enable the listed company to process information more efficiently. While the draft legislation will mandate the use of a standard form, details on the format and contents of the form will be set out in the regulations to be made available for public consultation at a later stage.

(c) One respondent noted that the substantial unitholder of a real estate investment trust ("**REIT**") is currently required to notify only the trustee, and asked if the substantial unitholder would also be required to notify the manager.

MAS' Response

In the case of a REIT, we agree that the manager should also be notified as he is usually the person announcing the change in substantial unitholdings to the market. The SFA will be amended to require the substantial unitholder to notify both the trustee and the manager.

(d) Some respondents noted that the objective of the notification requirements is to notify the market of the persons who are able to exercise voting rights in a listed company and the extent of such voting control. They were concerned that the migration of the substantial shareholder notification provisions to the SFA would give rise to a person having disclosable interests in those securities which he has the authority or control over their disposal. This is because the definition of deemed interest under section 4(1) of the SFA is wider, and includes such interests in addition to those in section 7 of the CA.

A consequence is that all licensed and exempt entities engaging in fund management, custodial services and discretionary trading would be deemed to have a disclosable interest as they have the authority to dispose of securities, even though they do not exercise voting power.

Furthermore, there might be implications on other legislation administered by MAS (such as the Banking Act). If MAS now requires aggregation of interests in shares regardless of whether or not voting rights could be exercised, the respondents suggested that this position should be made clear.

MAS' Response

We do not agree that the reporting requirements should be limited to only securities where the holder has the ability to exercise voting rights. Authority to acquire or dispose of securities is also relevant. In most cases, all three facets of control vest with the owner of the security. However, there may be instances where they do not. For example, a fund manager might have discretion to dispose of shares in his fund but not the right to exercise the voting rights attached to such shares; we would regard the fund manager as having a disclosure obligation.

Information on persons who have the right to acquire or dispose of securities is also important from the perspective of market transparency as it gives an indication of where stakes are concentrated.

To address concerns that the aggregation of all interests may be potentially misleading, the notification form will require the substantial shareholder to indicate the proportion of holdings in which he has both voting and disposal rights and the proportion of which he only has disposal rights.

Currently, both section 7(6)(a) of the CA and section 4(7)(a) of the SFA provide that where a person has entered into a contract to purchase a share, that person shall be deemed to have an interest in that share. This includes the case where the contract to purchase is made other than as a principal. Accordingly, a licensed or exempt entity engaging in fund management,

custodial services or discretionary trading who has acquired more than 5% of shareholdings in a listed company is currently subject to notification requirements under sections 82 to 84 of the CA, whether or not it can exercise the voting rights over those shares. The migration of the substantial shareholding notification requirements does not change the current position.

This interpretation of section 7 of the CA (set out in the paragraph above) has always been applied consistently across all the legislation under the purview of MAS, including the Banking Act.

(e) Several respondents suggested that MAS provide for disaggregation in respect of interests in shares held by the holder of a CMS licence. Where interests in shares are acquired by different business units within an entity (e.g. asset management vis-à-vis proprietary trading) separated by appropriate “Chinese walls”, the respondent felt that the interests should be disaggregated for reporting purposes on the basis that the business units operate independently of each other.

MAS Response

We have considered disaggregation of interests amongst units within an entity as well as of a parent company and its subsidiaries. Certain overseas jurisdictions have allowed disaggregation to various degrees: some only in respect of a parent company and its subsidiaries while others have also included different business units within an entity. Other jurisdictions have not allowed disaggregation.

We have concerns that allowing disaggregation of interests amongst units within an entity or of parent company and its subsidiary for reporting purposes could lead to abuse. It is also not in line with the objective of enhancing market transparency. Hence, we will not be providing for disaggregation in the draft legislation.

We also considered adopting a less stringent regime for fund managers where the notification thresholds for fund managers are set at 5%, 10% and every 1% thereafter. However, in the interests of market transparency and to maintain a level playing field for all market participants, we are not inclined to apply a different disclosure threshold only for fund managers.

Nevertheless, we note the argument that investment managers should be given some added degree of flexibility to deal in securities without being subject to reporting requirements. In this regard, we will engage the industry to better understand the practical difficulties faced and the compliance costs incurred by fund managers in reporting substantial shareholdings. Proposals for refinements can be made in the regulations which will be made available for consultation.

(f) Two of the respondents commented that the two-business-day timeline for a substantial shareholder to notify the listed company is too short for financial groups which have to aggregate global proprietary positions across different legal entities and countries. Due to the international nature of the operations, timeliness is often impacted by public holidays, time zone differences and transaction processing cycles. The respondents therefore requested that MAS consider extending the notification period to three business days.

MAS' Response

We do not agree. Changes in substantial shareholdings constitute price sensitive information which should be released to the market immediately.

We are of the view that a two-day period is reasonable.

Where it relates to a large corporate group, the holding company and every subsidiary, being related companies, is currently deemed to have an interest in the shares held by one another. The draft legislation will remove the notion of "downstream attribution" in determining whether a person has a deemed interest for the purposes of substantial shareholding reporting. Accordingly, only the holding company will be required to aggregate the interests of every related corporation. For each subsidiary, it will need to only report its own interests. In addition, the draft legislation will clarify that the notification obligation will arise only at the time the person becomes aware of the change in interests. This should help reduce compliance costs and cut down on the volume of reporting by corporate groups.

(g) One respondent noted that the current notification requirement could result in a situation where a small change in shareholdings interests (e.g. 5.8% to 6.1%) would trigger the need for notification whereas a change from 5% to 5.9% would not require notification. The respondent suggested that we consider requiring notification only where the change is significant.

MAS' Response

The existing notification regime under the CA is based on the approach that the crossing of a percentage point would be regarded as material for the purposes of notification rather than a 1% change in the substantial shareholder's interests. Given that the Singapore market is already familiar with the current notification requirements, we are wary of making any changes which may cause confusion to companies and practitioners. We will retain the current practice of requiring notification when a percentage point is crossed.

Further changes to enhance the notification regime for listed companies

In addition to the amendments made to effect the proposal at 5.2 above, the draft legislation will introduce the following changes to create a notification regime that achieves an optimal mix of consistency, transparency and flexibility².

(I) Notification of directors' interests

To further streamline the notification regime for listed companies, we will migrate the requirements on notification of changes in directors' interests currently residing in the CA to the SFA. Consolidating directors' notification requirements under the SFA will bring about a number of advantages. First, it will allow MAS to extend these requirements to directors of foreign companies with a primary listing in Singapore. Second, it will enable us to align the penalties for breaches of notification requirements by substantial shareholders, directors and officers, thus creating a level playing field for local and foreign companies. Third, it will reduce the complexity of the legislative framework governing notification of interests in listed companies and bring us in line with practices in many other countries where shareholdings notification requirements for substantial shareholders and directors of listed companies reside in a single piece of legislation.

The requirements for notification of interests by directors will follow closely the current requirements under the CA. Specifically, we will be migrating sections 165(1)(a) and (b), 165(2)(a) and (b), and 165(5)(a) of the CA, with some modifications as follows:

- (i) given that the main purpose of the notification requirements is to enhance market transparency in respect of dealings by directors, the draft legislation will not extend the disclosure requirement to include directors' interests in related corporations which is currently required under section 165(1)(a) of the CA;
- (ii) as participatory interests (i.e. units in a collective investment scheme) made available by the company relate more to a director's remuneration and benefits than interests in the company which warrants disclosure on a timely basis, the draft legislation will not extend the disclosure requirement to include participatory interests which is currently required under section 165(1)(a) of the CA;
- (iii) in place of the current requirements under section 164 and section 165 of the CA where a director is deemed to have an interest in securities held by his infant son or infant daughter, the draft legislation will clarify that a director shall be deemed

² These changes were not included in the Consultation Paper dated 5 December 2006.

- interested in securities held by his son or daughter under the age of 18; and
- (iv) to cater to cases where the chief executive officer (“**CEO**”) of the company is not a director, the draft legislation will make it clear that the CEO will be subject to the notification requirements.

(II) Notification requirements for business trusts and real estate investment trusts

The current notification requirements imposed on substantial unitholders and directors of the trustee-manager of a business trust (“**BT**”) will similarly be streamlined and consolidated under the SFA. However, in the case of a BT or REIT, investors are likely to be also concerned with the identity of the persons controlling the manager. Accordingly, the draft legislation will require the shareholder of the manager of a BT or REIT to give notification when his shareholdings in the manager reaches or crosses (either above or below) certain percentage points, namely, 15%, 30%, 50% and 75%, which are strategic levels at which he will, respectively, be regarded as a “controlling shareholder” under the SGX listing rules, considered to have acquired effective control under the Singapore Code on Take-overs and Mergers, have the ability to approve ordinary resolutions, and have the ability to approve special resolutions.

(III) Power to prescribe additional interests

In order to maintain Singapore’s competitiveness as an international financial centre, it is also important to ensure that our disclosure regime is kept up-to-date with market developments and in line with international best practices. In this regard, the draft legislation will incorporate a prescription power to allow MAS to extend the scope of the notification regime beyond the current interests in shares to other securities such as contracts for differences and other derivative instruments. We will conduct a consultation when we propose to invoke the prescription power.

5.3: Proposal to extend the substantial shareholdings notification requirements to substantial shareholders of foreign companies with a primary listing on the SGX.

Given that changes in substantial shareholdings constitute important information, we had proposed to extend the notification requirements to foreign-incorporated companies with a primary listing on the SGX.

All respondents agreed with the proposal. One respondent, however, felt that the requirement should be extended to foreign companies with a secondary listing. The respondent commented that companies that wish to list in Singapore should be committed and prepared to undertake certain key responsibilities to investors, no different from any other listed

companies. A mere notification was not particularly onerous and special treatment should not be accorded to companies because they have a primary listing elsewhere.

MAS' Response

We do not agree. As explained in the Consultation Paper, substantial shareholders of foreign companies with a secondary listing on the SGX are already subject to requirements of their primary market. Requiring substantial shareholders to comply with an additional set of notification requirements under the SFA (which may differ in terms of notification thresholds, definition of disclosable interests, notification period, etc.) could result in confusion and pose administrative difficulties.

Further, the number of investors in Singapore is likely to constitute only a minority of the company's shareholders. This makes it difficult to justify the increase in cost of compliance. When investing in a company with a secondary listing, investors should be aware that regulatory oversight vests with the home regulator. Accordingly, investment decisions would have to be made bearing that in mind.

5.4: Proposal to introduce civil penalties for breaches of the substantial shareholdings notification requirement

Currently, a substantial shareholder who fails to notify the company and the SGX in accordance with sections 82 to 84 of the CA and section 137 of the SFA is liable on conviction to a fine not exceeding S\$5,000 and S\$25,000 respectively. These penalties are not adequate for reckless or intentional breaches. To enable MAS to take enforcement action proportionate to the seriousness of the offence, we had proposed to introduce civil penalties for breaches of substantial shareholdings notifications. The amount of civil penalty that may be imposed of at least \$50,000 and not more than \$2 million is in line with section 232 of the SFA.

Respondents had mixed views on the proposal. While some respondents were supportive of the introduction of civil penalty regime to deal with serious cases, other respondents were of the view that extending civil penalties to breaches of substantial shareholdings notifications might be too harsh as such breaches are inherently less serious than market misconduct offences such as insider trading, market manipulation and market rigging. The respondents were also concerned that extending the civil penalty regime to cases where the disclosure is neither intentional nor reckless could place a great burden on substantial shareholders and listed companies. One respondent felt that in more serious cases, it should be open to MAS or the criminal authorities to pursue the case under other offences set out in Part XII of the SFA.

MAS' Response

We agree with the respondents that non-disclosure of changes in substantial shareholdings is generally less serious than breaches of certain market misconduct provisions, such as insider trading. For this reason, a breach of substantial shareholdings requirement is, and will continue to be, a compoundable offence under the SFA, subject to a cap of S\$25,000 (being the maximum fine imposed under section 137 of the SFA). However, we have dealt with cases where there were flagrant breaches of the law. In such cases, the current penalty of S\$25,000 does not send a sufficiently strong signal to the market on the gravity of the breach. Appropriate civil penalties would be necessary for deterrence and to ensure effective enforcement of the disclosure requirements.

To address the respondents' concerns, the draft legislation will introduce a new "upper-tier" penalty. Where the contravention of notification requirements by a person is committed intentionally or recklessly, he shall be subject to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding two years or both. The quantum of fine is similar to that for a breach of continuing disclosure obligations under Section 203 of the SFA where the non-disclosure is intentional or reckless. Having regard to the nature of the offence, a jail term of two years is appropriate. Civil penalties will also apply in such cases. For all other cases of non-compliance, the current penalty of a maximum fine of \$25,000 will continue to apply.

Section C: Recognition of Foreign Business Trusts

5.5: Proposal to establish a recognition regime to exempt foreign BTs offering units to retail investors from the Business Trusts Act registration requirement

Given that it would be administratively difficult for a foreign-constituted BT to comply with overlapping provisions under the law of its place of constitution and the Business Trusts Act ("**BTA**"), we had proposed to establish a recognition regime such that foreign BTs which are recognised need not be registered under the BTA before their units can be offered to retail investors. We had also proposed that a foreign BT would be recognised only if the laws and practices of the jurisdiction under which it is constituted and regulated afford protection to Singapore investors equivalent to that provided under the BTA.

All respondents welcomed the proposal.

(a) Several respondents sought clarification on what regulatory equivalence means, and enquired if MAS will publish a list of accepted jurisdictions.

MAS' Response

MAS will regard a regulatory regime with rules and regulations similar to that of the BTA as a comparable regime. We will not be publishing a list of recognised jurisdictions. As more experience is gained in administering the requirements, we may issue guidelines to provide guidance on the factors we will take into account in considering whether the rules and regulations of the jurisdiction are comparable. Where the regulatory regime is not entirely the same, we can consider plugging regulatory gaps by imposing additional requirements as conditions for the grant of recognition.

(b) One respondent noted that the BTA is based on the concept of a single responsible entity, and asked for clarification on how regulatory equivalence will be determined if the jurisdiction under which the foreign BT is constituted retains the bifurcated structure (i.e. separate trustee and manager).

MAS' Response

The single responsible entity model is considered to be appropriate for a business trust because it is recognised that an independent trustee would find it difficult to clearly set out an operating mandate under the trust deed or to supervise the manager's business decisions. Having a single responsible entity also ensures that fiduciary responsibility towards unitholders of the BT is clearly placed on a single entity. While the BTA currently provides the flexibility for the trustee and manager roles to be undertaken by separate entities by allowing the trustee-manager to appoint a separate manager as an agent to perform the management functions for the BT, the primary responsibility towards unitholders remains with the trustee-manager.

For a BT which operates under the dual responsibility model, legal liabilities may differ making it difficult to determine regulatory equivalence. In such a circumstance, we will review the rules and regulations governing the trustee and manager in that jurisdiction to assess if they provide comparable protection to investors.

Section D: Removal of Resale Restrictions upon Listing of Securities

5.6: Proposal to lift the resale restriction for securities acquired under the Accredited or Institutional Investors exemption when the issuer lists additional securities of the same class on an securities exchange and a prospectus is issued in connection with the offer and listing

Currently, securities offered to an accredited or institutional investor (“**AI**”) under the AI prospectus exemption are not allowed to be sold to any non-AI without a prospectus for a period of six months. In other words, the AI cannot rely on any exemption other than the AI exemption to on-sell the securities within six months. We had proposed to lift this six-month resale restriction should the issuer subsequently issue a prospectus in connection with a public offer and is listed on an approved exchange.

All respondents welcomed the proposal. Two respondents commented that the proposal should be extended to cases where the listing is on an overseas exchange. The respondents were of the view that the concern of allowing investors to make an informed decision would be addressed so long as offer documents are being prepared in relation to the listing and offering of the securities on the overseas securities exchange.

MAS’ Response

As explained in the Consultation Paper, where the issuer has issued a prospectus in connection with its public offer and is subject to continuous disclosure obligations after listing, all investors will be placed on equal footing and there is adequate information for investors to make an informed decision with respect to the issuer’s securities in the secondary market. Hence, there is no strong reason to continue imposing the resale restriction on securities held by the AIs.

We do not agree with extending the proposal to cases where the listing is on an overseas exchange. Where the listing is on an overseas exchange, there is a possibility that the offer document issued may not contain adequate information or be readily available to investors in Singapore. There is also no assurance that the continuing listing requirements in the overseas exchange are comparable to those of an approved exchange. Hence, we consider it more appropriate to assess the circumstances on a case-by-case basis. Where the costs of compliance outweigh the benefits, we may grant an exemption to the offeror.

Section E: Audit of Financial Statements of Debenture Issuers

Given that there is no equivalent requirement for a share issuer to prepare and lodge half-yearly audited financial statements, we had proposed to remove the requirement for audit of half-year financial statements for debenture issuers.

All respondents agreed with the proposal. Several respondents requested that MAS also consider removing the requirement for preparation of financial statements in the case of debenture issuers which are special purpose vehicles and are not required under the laws of their jurisdiction of incorporation to prepare financial statements.

MAS' Response

We believe that this comment is made in relation to structured notes. In the case where the notes are not guaranteed by any entity and investors are subject to credit risk of the issuer, we consider it important for the issuer to prepare financial statements as its financial health would have an impact on the ability of debenture holders to receive payments. However, where the notes are guaranteed by a licenced financial institution and the issuer is merely a "pass through" vehicle, we agree that the financials of the issuer are less important and the requirement to prepare financial statements may indeed be too onerous. We are therefore agreeable to provide an exemption in the latter case subject to certain conditions. The exemption regulations and proposed conditions will be consulted on at a later date.

Section F: "Materiality" Qualification for Civil Liability

The SFA imposes criminal and civil liability for false or misleading statements or omissions in a prospectus. For the purposes of the civil liability provision, an investor is required to demonstrate that he has suffered a loss as a result of that statement or omission. In this regard, we had sought feedback on views that an additional requirement for the statement or omission to be material would not be necessary as there were already sufficient safeguards within the legal framework to deter frivolous suits or claims.

Respondents had expressed mixed views. Several respondents shared MAS' views that a "materiality" qualification was not necessary. One respondent highlighted that the principles of reasonable foreseeability and remoteness of damage were already available to require a potential plaintiff to establish a nexus between the act complained against and the loss suffered. A defendant may also rely on the defence afforded under section 255 of the SFA if he had made all reasonable enquiries and believed on reasonable grounds that the statement was not false or misleading, or there was no omission. The respondent also commented that there was additional

protection against frivolous claims under Order 18 Rule 19 of the Rules of Court which would allow a defendant to strike out a claim that has no reasonable cause of action, as frivolous or vexatious.

Other respondents, however, felt a materiality qualification should be set out explicitly. While the respondents generally agreed with our views that the current requirement for an investor to prove his loss would address the concern that issuers and their advisers may be inundated with frivolous law suits, they were of the view that such a requirement was insufficient and that there should be a condition that the misstatement or omission must be material to make it clear. The respondents were concerned that investors could file claims, even if there is no real prospect of pursuing a successful legal claim, in the hope that they may be offered some financial incentives to drop the claim.

MAS' Response

While we understand the respondents' concerns and their need for certainty, it is important to note that introducing a "materiality" qualification for civil liability would institute an additional hurdle, making it more difficult for investors who have genuinely suffered losses as a result of a deficient prospectus to seek compensation. Introducing a "materiality" element would necessitate the aggrieved investor having to prove that the statement or omission is material to his subscription or purchase of the securities in addition to proving that (i) the statement is false or misleading or there is an omission; and (ii) he has suffered loss or damage as a result of the false or misleading statement or omission. We consider that this additional hurdle to protect the issuers and their advisers has more relevance in a more litigious jurisdiction..

After careful consideration, we have decided not to introduce any "materiality" qualification in the civil liability provision.

Section G: Change of Regulatory Regime for Restricted Schemes

5.9 Proposal to introduce a notification regime for restricted schemes, in place of the current regime which requires restricted schemes to be authorised or recognised

We proposed removing the requirement that restricted schemes have to be authorised or recognised. Currently, the Responsible Person of a scheme³ applies to MAS for the scheme to be authorised or recognised for an offer. Under the proposed amendment, the Responsible Person of a scheme would be required to lodge with MAS a notification (the "**Notification**") of the intent to make an offer at least seven days before the commencement of the offer.

³ "Responsible person" is defined in Part I of the SFA.

The requirements for the Notification regime would be largely similar to the current regime of either authorisation or recognition for restricted schemes. We proposed that:

- (i) The Responsible Person of the scheme indicates whether the manager is licensed or regulated in its home jurisdiction and disclose information that would enable an assessment as to whether the manager is fit and proper;
- (ii) The Responsible Person of the scheme will be required to provide a warning statement to investors that the scheme is not authorised or recognised by MAS as well as disclose the risks associated with investing in such a scheme; and
- (iii) MAS will be given the powers to issue directions to prohibit the Responsible Person from making or continuing to make an offer of units in a restricted scheme should the manager or the scheme cease to satisfy the requirements for it to be a "successfully notified" scheme.

(a) Some respondents sought clarification on what the "fit and proper" criteria for managers would entail.

MAS' Response

MAS expects managers to be competent and honest. Managers should also be persons of integrity who able to fulfill their statutory obligations under the SFA and act in the best interests of investors. Managers are also expected to have sound financial standing. As with the current approval process, the Notification requires the Responsible Person of a restricted scheme to provide verifiable facts for MAS to assess whether the manager satisfies the "fit and proper" criteria. Specifically, the manager has to answer questions that allow MAS to ascertain whether the manager has in the past 10 years:

- (i) had any judgment given against it in any civil proceedings or incurred penalties imposed by a public authority;
- (ii) been refused the right or restricted in its right to carry on any activity for which a specific license is required by law;
- (iii) been censured, disciplined, suspended or refused membership or registration by a regulatory authority for any activity; and
- (iv) had a receiver, a receiver and manager, a judicial manager or an equivalent person appointed in relation to or in respect of any property of the manager.

MAS will take into account the responses to these questions to determine if a manager is "fit and proper".

(b) Some respondents sought clarification on whether the “fit and proper” criteria imposed on managers would be applicable to the representatives of the manager.

MAS’ Response

MAS does not require the Responsible Person of a restricted scheme to provide verifiable facts as to whether the manager's representatives are fit and proper

(c) A few respondents inquired whether managers would be required to make annual declarations and whether managers are required to notify MAS of any cessation of offers.

MAS’ Response

The Responsible Person of a restricted scheme would be required to provide an annual declaration to MAS that the scheme is still being offered in Singapore. The Responsible Person would also have to inform MAS of material changes in the particulars of the original Notification and when the scheme ceases to be offered in Singapore.

(d) A few respondents recommended that the required warning statement for investors which reads “*such schemes are not authorised or recognised by MAS*” be re-phrased to “*such schemes are not required under the Act to be authorised or recognised by MAS*”. Others requested MAS to provide a template of the warning statement. One respondent queried whether there are obligations on distributors of schemes to provide such warnings or disclosure to investors.

MAS’ Response

We are not agreeable to the suggested re-phrasing of the warning statement. It is important to alert investors that restricted schemes are not regulated by MAS. This to ensure that investors make informed investment decisions taking into account the risks associated with the lack of regulatory oversight.

MAS will provide a template of the required warning statement in the relevant regulations (i.e. the *Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations*). The Responsible Person of a restricted scheme should ensure that its distributors have in place the requisite warnings that these schemes are not authorised or recognised by MAS. Distributors should also ensure that they meet all requirements under the FAA.

(e) One respondent sought clarification as to whether an exception to the requirement for managers to be licensed or regulated will be made for exempt fund managers.

MAS' Response

Restricted schemes may be offered by exempt fund managers subject to the following conditions:

- (i) the scheme is constituted in Singapore;
- (ii) there is a trustee for the scheme approved under section 289 of the SFA; and
- (iii) the exempt fund manager is a public company.

This is in line with the current policy for the authorisation of restricted schemes where an approved trustee provides oversight on the exempt fund manager's activities.

(f) One respondent sought our confirmation as to who should be responsible for making the Notification.

MAS' Response

The Responsible Person for a restricted scheme or its appointed solicitor can make the Notification. If the solicitor makes the Notification, MAS will require the Responsible Person to (i) confirm that the solicitor's submission is true and accurate; and (ii) sign-off on the Notification.

5.10 Proposal to remove the requirement for an information memorandum

We proposed removing the requirement for an information memorandum to accompany an offer of units in a restricted scheme.

One respondent was of the view that investors should be informed that they have the right to see the information memorandum or other relevant documents.

MAS' Response

We feel that there is no need to specifically inform accredited investors of the right to see the information memorandum or other relevant documents. This is because we are of the view that accredited investors are well placed to request for the relevant information.

CHAPTER 6: AMENDMENTS TO MISCELLANEOUS PROVISIONS IN THE SFA AND THE FAA

Section A: Power to make Regulations to Charge for Expenses Incurred under the SFA and the FAA

6.1: Proposal to insert new provisions in the SFA and the FAA to enable MAS to make regulations to charge such expenses incurred

The proposal was to insert a new provision under section 341 of the SFA, and a similar provision under section 104 of the FAA to enable MAS to make regulations to charge expenses incurred to relevant applicants in respect of any matter required for the purposes of the SFA or the FAA.

Some respondents expressed the view that they would prefer a fixed fee for expenses charged as it would be easier to manage administratively. One respondent suggested that licensees should be informed of the nature and basis of the expenses to be charged, and that MAS also consider setting a limit on the amount of such expenses that can be charged.

MAS' Response

We are aware of the impact any change in the fee structure will have on the industry. When MAS proposes to invoke this provision to promulgate regulations to charge for expenses, we will conduct a separate policy consultation. The regulations will be subject to policy review and public feedback.

**MONETARY AUTHORITY OF SINGAPORE
11 OCTOBER 2007**

ANNEX

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

- Allen & Gledhill
- Arafat Selvam Alliance LLC
- Asian Public Real Estate Association
- Aviva Ltd
- Bank of China Limited, Singapore Branch
- Citibank N.A., Singapore Branch
- Clifford Chance Wong
- DBS Bank Ltd
- Harry Elias Partnership
- Institute of Certified Public Accountants of Singapore
- Investment Management Association of Singapore
- JPMorgan Chase Bank, N.A.
- Lion Capital Management Limited
- Lockton Companies (Singapore) Pte Ltd
- Macquarie Securities (Singapore) Pte Limited
- Phillip Securities Pte Ltd
- Singapore Exchange
- Singapore Investment Banking Association
- Stamford Law Corporation
- T. Rowe Price International, Inc.
- The Association of Banks in Singapore
- UOB Kay Hian Pte Ltd