

CONSULTATION PAPER

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Policy
Consultation on
Amendments to
the SFA and the FAA

MAS

Monetary Authority of Singapore

PREFACE

The MAS is conducting a review of the Securities and Futures Act, Cap. 289 (the “SFA”) and the Financial Advisers Act, Cap. 110 (the “FAA”) with a view to achieving greater consistency in our regulations, facilitating new business activities and products, and refining our supervisory and enforcement toolkit.

2 MAS intends to carry out the consultation in stages, and will be releasing a number of consultation papers in the coming months.

3 This paper contains 2 key proposals for public consultation.

(a) The first key proposal is for the introduction of a representative notification framework:

(i) It is proposed that a representative notification framework replace the current bifurcated framework where there is separate treatment for licensed representatives and exempt representatives. The proposed notification framework is covered in greater detail in Section 1.3 of this paper.

(ii) In conjunction with the proposed notification framework, MAS also proposes to establish a public register of representatives permitted to carry out regulated activities under the SFA and FAA. It is envisaged that the proposed public register would

reflect the particulars, employment history and compliance records of representatives permitted to conduct regulated activities. Details of the proposed public register are set out in Section 1.4 of this paper.

(iii) To migrate representatives under the current framework to the proposed notification framework, it is contemplated that transitional arrangements will be put in place. The proposed transitional arrangements are described in Section 1.5 of this paper.

(b) The second key proposal is for the conferment of certain powers on MAS in our supervision of markets and clearing facilities in emergencies, namely:

(i) The insertion of new provisions in Part II and Part III of the SFA to give MAS the power to appoint a person to advise an Approved Exchange or a Designated Clearing House in the conduct of its business, in specified circumstances. Details of the proposed new provisions are set out in Section 2.2 of this paper; and

(ii) The expansion of Section 143 and Section 144 of the SFA to provide information-gathering powers for all circumstances where MAS exercises its emergency powers. Further details are provided in Section 2.3 of this paper.

4 MAS invites interested parties to forward their views and comments on the issues outlined in this consultation paper. Parties who do not wish to comment on all of the issues may confine their responses to the specific sections of interest. Written comments should be submitted to:

Market Conduct Policy Division
Market and Business Conduct Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
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Email: **sfa_faa06@mas.gov.sg**
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MAS requests for all comments and feedback to be submitted by **22 November 2006**.

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

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PART 1: REPRESENTATIVE NOTIFICATION FRAMEWORK

SECTION 1.1. INTRODUCTION

1.1.1 To streamline and ensure greater consistency in the process for allowing representatives to conduct, on behalf of financial institutions (“**principals**”), regulated activities under the Securities and Futures Act Cap. 289 (“**the SFA**”) or the Financial Advisers Act Cap. 110 (“**the FAA**”), MAS is proposing to introduce a notification framework and a public register for all representatives in the banking, insurance and capital markets sectors.

1.1.2 Under the current framework, two key categories of representatives exist. Representatives who act for principals licensed under the SFA or the FAA (“**licensed principals**”) are referred to as “**licensed representatives**”, whilst those who act for principals exempted from licensing (“**exempt principals**”¹) are referred to as “**exempt representatives**”. In this paper, the term “exempt representatives” is a reference to representatives acting for principals exempted under Sections 99(1)(a), (b), (c), and (d) of the SFA, and representatives acting for principals exempted under Sections 23(1)(a), (b), (c), (d) and (e) of the FAA.

1.1.3 It is contemplated that the proposed notification framework would replace the current framework and apply to all (i) licensed representatives, and (ii) exempt representatives alike.

¹ Principals already licensed under other MAS-administered Acts, such as the Banking Act and the Insurance Act are exempted from licensing requirements under the SFA and the FAA. This is to minimise costs arising from the holding of multiple licences.

SECTION 1.2. RATIONALE BEHIND OUR PROPOSALS

1.2.1 MAS' review of the current framework for representatives was prompted by the following considerations:

- (a) The industry has given feedback that the current framework creates an uneven playing field between licensed representatives and exempt representatives. Unlike exempt representatives, licensed representatives are subject to MAS' screening before they are allowed to commence regulated activities. They are also subject to payment of licence application fees, renewal fees and annual licence fees. The industry has argued that this operates as a disincentive for individuals to seek employment with licensed principals, and results in licensed principals being disadvantaged over exempt principals in the recruitment and retention of representatives; and

- (b) Unlike other jurisdictions such as the United Kingdom ("UK"), Australia and Hong Kong, there is presently no public register of representatives who are permitted to carry out regulated activities in Singapore. The absence of such a public register could lead to an increased risk of consumers dealing with individuals who are neither exempt representatives nor licensed representatives.

SECTION 1.3. PROPOSED NOTIFICATION FRAMEWORK

1.3.1 To achieve a consistent approach for all individuals carrying out regulated activities under the SFA and/or the FAA, MAS intends to introduce a notification framework for all representatives in the banking, insurance and capital markets sectors who conduct SFA and/or FAA regulated activities.

1.3.2 As part of the proposed notification framework, MAS would maintain a public register on the MAS website listing relevant particulars of representatives, against which principals would be able to carry out probity checks. Consumers would also be able to check the public register for any adverse records and confirm that they are dealing with regulated representatives.

Key Features of the Proposed Notification Framework

1.3.3 The key features of the proposed notification framework are set out below.

- (a) The framework would apply consistently to all representatives of both licensed principals and exempt principals.
- (b) For each proposed representative, the relevant principal would be required to certify to MAS that it has conducted reasonable checks and is satisfied that the proposed representative is fit and proper in accordance with MCG-G01 *Guidelines on Fit and Proper Criteria*. The relevant

principal would also be required to notify MAS of (i) the principal's intention to allow that proposed representative to carry out regulated activities on its behalf and (ii) the specific types of proposed regulated activities.

- (c) Notification fees would be payable for notifications made to MAS. The quantum of fees to be imposed would be kept close to current application fees for licensing. MAS intends to conduct a separate consultation on the notification fees and any other fees that are to be applied under the proposed notification framework.
- (d) The time period between notification to MAS and the commencement of regulated activities would be kept reasonably short. To this end, it is proposed that:
 - (i) The principal's notification and fit and proper certification would be submitted electronically to MAS; and
 - (ii) The name of the proposed representative would normally 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. In such a situation, the proposed representative's name would not be entered on the register within the 7-14 day time frame. MAS would instead contact and

notify the principal of any concerns within that time. If, on the basis of information available, MAS considers the proposed representative to be not fit and proper, MAS would have the power to refuse to enter the name of that individual on the public register. In such an event, the proposed representative would be given an opportunity to be heard in accordance with procedures set out in the SFA or the FAA, as may be relevant.

- (e) Once the proposed representative's name is entered on the public register, the principal would be informed and the proposed representative would be permitted to carry out regulated activities on behalf of the principal who submitted the notification and certification.

Change of Activities and Change of Principals

1.3.4 Under the proposed notification framework, principals would be required to notify MAS of any cessation of activities by their representatives. For any addition to the type of regulated activities to be carried out by their representatives, principals would also be required to notify and certify to MAS that the representatives have met the additional qualification requirements, if any, in respect of the additional types of regulated activities proposed to be conducted. In the case of a change of principal, the original principal would be required to notify MAS of the cessation of the representative's employment with the original principal. 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 behalf². All principals would also be required to notify MAS once they become aware, at any point in time, that any representative under their employment no longer satisfies the fit and proper criteria.

Principals Expected to Only Certify Fit and Proper Individuals

1.3.5 Under the proposed notification framework, principals would be expected to play an important role in ensuring that only fit and proper individuals are named on the public register of representatives. Principals would be required to carry out reasonable checks before issuing the requisite “fit and proper” certification. Principals who issue “fit and proper” certifications without having made reasonable checks would be subject to regulatory action. In determining what regulatory action might be appropriate, MAS would take into account, *inter alia*, the level of culpability of the principal, the level of care and diligence exercised by the principal, and whether the principal’s failing was systemic in nature.

Benefits of the Proposed Notification Framework

1.3.6 In MAS’ view, the proposed notification framework better achieves our objectives of maintaining a consistent, efficient and streamlined process for allowing individuals to carry out regulated activities than either the current bifurcated system of licensed

² After the new principal’s certification and notification to MAS, there may be a lag time of approximately 714 days before the name of the proposed representative is entered on the public register. However, a new principal would be able to reduce or eliminate this lag time by submitting the certification and notification to MAS in advance, prior to the date of the proposed representative commencing employment with the new principal.

representatives and exempt representatives, or a licensing regime for all representatives. The proposed notification framework offers, in particular, the following benefits:

- (a) Every individual seeking to conduct regulated activities on behalf of either a licensed principal or exempt principal would enjoy consistent regulatory treatment under a single entry regime; and
- (b) Compared to the current licensing regime, notification would allow an individual to commence regulated activities within a shorter timeframe. The 7-14 day notification process would be considerably shorter than the current licensing processing time of approximately 40 days for licensed representatives.

1.3 MAS seeks views on the features and processes of the proposed notification framework, and its application to both licensed representatives and exempt representatives.

SECTION 1.4. MEASURES TO FACILITATE FIT AND PROPER CHECKS BY PRINCIPALS

The Proposed Public Register

1.4.1 The use of a public register of representatives is well established in some other jurisdictions. The UK Financial Services Authority³ (“FSA”),

³ The FSA public register can be accessed at the following website:
http://www.fsa.gov.uk/register-res/html/prof_indiv_fram.html

the Australian Securities and Investments Commission⁴ (“ASIC”), the Hong Kong Securities and Futures Commission⁵ (“SFC”) and the Hong Kong Monetary Authority⁶ (“HKMA”) all maintain public registers that record relevant information of representatives such as the representatives’ personal particulars, the names of their principals, the types of regulated activities they are permitted to conduct and the dates of commencement of such activities. In the UK and Hong Kong, past disciplinary actions taken by the regulators against representatives are also reflected on the public registers. In Australia, past disciplinary actions taken by ASIC are not reflected in its public register of representatives, but ASIC maintains a searchable database of banned representatives⁷ that is accessible to the public.

1.4.2 In conjunction with the proposed notification framework, MAS intends to establish a public register of representatives that would reflect, *inter alia*:

- (a) The representative’s name and assigned reference number;
- (b) The name of the current principal on whose behalf the representative acts, and the past principal(s) on whose behalf the representative had acted over a period of three years immediately prior to notification by the current principal;

⁴ The ASIC public register can be accessed at the following website:

<http://www.search.asic.gov.au/fsr/far.html>

⁵ The SFC public register can be accessed at the following website:

<http://www.sfc.hk/sfc/html/EN/intermediaries/trading/licensed/licensed.html>

⁶ The HKMA public register can be accessed at the following website:

<http://www.info.gov.hk/hkma/eng/ereg/index.htm>

⁷ The ASIC database of banned representatives can be accessed at the following website:

<http://www.search.asic.gov.au/ban.html>

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- (c) The permitted regulated activities of the representative and the date on which the representative was permitted to conduct such activities; and
 - (d) Any formal regulatory action(s) taken by MAS against the representative.

1.4.3 Apart from assisting consumers to verify that they are dealing with regulated representatives, the public register would also aid principals in conducting probity checks on any representative as:

- (a) The name(s) of the past principal(s) on whose behalf a representative had acted in the preceding three-year period prior to notification by the current principal would be listed on the public register. Such information could facilitate appropriate employment checks with the past principal(s); and
- (b) All formal regulatory action(s) taken against a representative by MAS would also be reflected on the public register.

1.4.4 The publication of all formal regulatory actions taken by MAS against any representative and the recording of such formal regulatory actions on the public register would be important complements to the proposed notification framework. The publication of Prohibition Orders (“**POs**”), i.e. banning orders that prohibit individuals from carrying out

specified regulated activities for a specified period of time⁸, and the maintenance of such records in the public register would be of even greater importance under the proposed notification framework, given the intended purpose of POs, which is to ban individuals with adverse records from carrying out regulated activities under the SFA and/or the FAA. MAS announced in November 2004, our intention to publish all formal regulatory and enforcement actions for market conduct breaches taken by MAS. Since then, numerous publications of formal market conduct regulatory and enforcement actions have been made. As part of the proposed notification framework, and consistent with MAS' general policy of publishing all formal market conduct regulatory actions, POs will be published and reflected on the public register.

Continued Application of Fit and Proper Criteria

1.4.5 Under the proposed notification framework, the relevant MCG-G01 *Guidelines on Fit and Proper Criteria* would continue to apply and provide guidance to principals on relevant factors for assessing whether a proposed representative is fit and proper.

An Offence to Provide False or Misleading Information

1.4.6 Principals would need to rely, to a significant extent, on the veracity of the information provided by the proposed representative when

⁸ Under Section 59 of the FAA, a prohibition order may be made to prohibit a person from providing any financial advisory service, or from providing such financial advisory service in specified circumstances or capacities, whether permanently or for a specified period. Under Section 95 of the SFA, a prohibition order may be made prohibiting a licensed person from performing one or more of the regulated activities permanently or for such period. Whilst prohibition orders can be issued under both the SFA and the FAA, the circumstances under which prohibition orders may be issued under the SFA and the FAA differ. MAS will be separately reviewing the alignment of the circumstances for issuing prohibition orders under the SFA and the FAA.

they carry out probity checks. MAS intends to make it an offence for any individual to provide any false or misleading information concerning himself/herself to the principal when required to furnish information to the principal for the purposes of probity checks.

1.4(a) MAS seeks views on the proposal to establish a public register of representatives, and also invites comments as to the type of information and/or particulars of representatives that should be reflected on the public register.

1.4(b) MAS invites comments on the proposed facilitative measures for the conduct of fit and proper checks by principals.

SECTION 1.5. TRANSITIONAL ARRANGEMENTS

1.5.1 When the proposed notification framework comes into operation, all representatives, whether licensed or exempt at that point in time, would be migrated to the proposed notification framework outlined in Section 1.3 of this paper.

- (a) Prior to the migration, exempt principals would need to certify to MAS, that their existing representatives are fit and proper and submit the relevant notification of intention to commence regulated activities. This is not expected to be an overly-onerous exercise as exempt principals should, pursuant to current requirements, already have conducted probity checks on their existing representatives. Once MAS

receives the notification and certification, the names of these existing exempt representatives would be automatically reflected on the public register.

- (b) In the case of licensed representatives, their names would be automatically entered into the public register by MAS at the point of migration.

1.5.2 In view of the large number of exempt representatives in the capital markets and financial advisory sectors who would need to be certified by their principals and notified to MAS for entry on the public register, as well as the large number of licensed representatives to be migrated over, we expect this process to be carried out in several phases, with representatives divided into several batches for better management of this transition.

1.5.3 For the proposed notification framework to be implemented, it will be necessary for MAS to put in place enabling infrastructure, such as an Information Technology (“IT”) system, to support the notification process. Even though the necessary legislative changes to enable the introduction of the proposed notification framework will be made as part of the current legislative review exercise, we intend to operationalise the proposed notification framework only after the necessary infrastructure and IT systems have been put in place, tested and verified to be able to run satisfactorily. We target to operationalise the proposed notification framework by the first half of 2008, subject to the necessary legislative changes being made and the relevant IT infrastructure being fully functional.

1.5 MAS seeks views on the proposed transitional arrangements for currently exempt representatives migrating to the proposed notification framework.

SECTION 1.6. TEMPORARY REPRESENTATIVES

1.6.1 Apart from the licensed representatives and exempt representatives discussed in this paper thus far, Section 87A of the SFA also 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 only valid for a period of not more than 3 months from the date of its issue. MAS may grant temporary representative's licences for a total maximum period of 6 months within a 24-month period.

1.6.2 Individuals applying for temporary representatives' licences are required to satisfy the criteria specified under the SFA 04-G04 *Guidelines on Criteria for the Grant of a Temporary Representative's Licence*. Temporary representatives are not allowed to change principals during the validity period of their licences and are not subject to the academic and examination requirements specified under the SFA 04-N06 *Notice on Minimum Entry and Examination Requirements for Representatives of Holders of Capital Markets Services Licence and Exempt Financial Institutions*. The principal of a temporary representative is required to furnish an undertaking, as provided for under regulation 3A(2) of the Securities and Futures (Licensing and Business Conduct) Regulations

(Rg. 10), to MAS that the principal will be fully responsible for the activities and conduct of the temporary representative.

1.6.3 Under the proposed notification framework, it is envisaged that principals intending to appoint temporary representatives would be subject to the notification process (paragraph 1.3.3) and the public register (paragraphs 1.4.1 to 1.4.4) and sanctions against provision of false information (paragraph 1.4.6) would apply to temporary representatives. The only difference, in the way that the proposed notification framework would relate to temporary representatives, is that the relevant principals would be required to certify that the proposed temporary representatives meet the criteria under the SFA 04-G04 *Guidelines on Criteria for the Grant of a Temporary Representative's Licence*, rather than the criteria under the MCG-G01 *Guidelines on Fit and Proper Criteria*. In terms of transitional arrangements, the names of existing temporary representatives would be automatically entered on the public register at the point of migration.

1.6 MAS seeks views on the application of the proposed notification process to temporary representatives under the SFA.

SECTION 1.7. PROVISIONAL REPRESENTATIVE SCHEME

1.7.1 Separately, in response to queries from the industry, MAS has been looking into the possibility of introducing a provisional representative scheme. This is 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. The current thinking is that a provisional representative would need to satisfy all criteria specified in the MCG-G01 *Guidelines on Fit and Proper Criteria* but he/she would be given a grace period to satisfy the examination requirements under the SFA 04-N06 *Notice on Minimum Entry and Examination Requirements for Representatives of Holders of Capital Markets Services Licence and Exempt Financial Institutions under the SFA* and/or the FAA-N07 *Notice on Minimum entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers*.

1.7.2 The current thinking is that a principal of a proposed provisional representative would be required to:

- (a) Notify and certify to MAS that the proposed provisional representative possesses (i) at least five years of relevant experience and (ii) at least a Bachelor's degree or equivalent, or a professional qualification. Acceptable professional qualifications would include those listed in the exemptions for CMFAS Product Knowledge and Analysis Papers; and
- (b) 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).

1.7.3 If a provisional representative scheme is introduced, we envisage that it would be assimilated into the proposed notification framework upon the operationalisation of the latter.

1.7 MAS seeks views on the proposal to introduce a provisional representative scheme and the application of the proposed notification framework to provisional representatives.

PART 2: EMERGENCY POWERS OF MAS

SECTION 2.1. INTRODUCTION

2.1.1 Approved exchanges (“**AEs**”) and designated clearing houses (“**DCHs**”) operate systemically-important markets and clearing facilities that have the potential to undermine stability or public confidence in the financial system should they fail or be disrupted.

2.1.2 MAS has undertaken a general review across the different sectors of the adequacy of our powers to deal with emergencies. As part of this general review we have examined the current adequacy of our emergency powers in Sections 32, 34 and 81 of the SFA (collectively termed the “**emergency powers**”) relating to AEs and DCHs.

SECTION 2.2. APPOINTMENT OF ADVISERS TO AN APPROVED EXCHANGE OR A DESIGNATED CLEARING HOUSE

2.2.1 In a scenario 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, MAS can exercise its emergency powers to take action as necessary to restore public confidence.

2.2.2 However, the emergency powers do not currently provide for MAS to appoint an external expert or consultant to provide advice to the AE or DCH as appropriate. Such an option would give the AE or DCH the benefit of leveraging on independent expertise, and at the same time, would provide a measure of public confidence in the management of the AE or DCH.

2.2.3 MAS therefore proposes to provide, in new provisions to be inserted in Part II and Part III of the SFA, that MAS would be able to appoint a person to advise an AE or DCH in the conduct of its business if:

- (a) An AE or DCH is likely to or has become unable to meet its obligations; or
- (b) MAS is of the opinion that the AE or DCH:
 - (i) Is carrying on its business in a manner detrimental to regulatory objectives;

- (ii) Is likely to or has become unable to meet its obligations;
- (iii) Has contravened any of the provisions of the SFA; or
- (iv) Has failed to comply with any condition attached to its approval or designation as an AE or DCH respectively.

2.2 MAS seeks views on the proposal for new provisions to be inserted in Part II and Part III of the SFA to give MAS the power, in specified circumstances, to appoint a person to advise an AE or DCH in the conduct of its business.

SECTION 2.3. DISCLOSURE OF INFORMATION

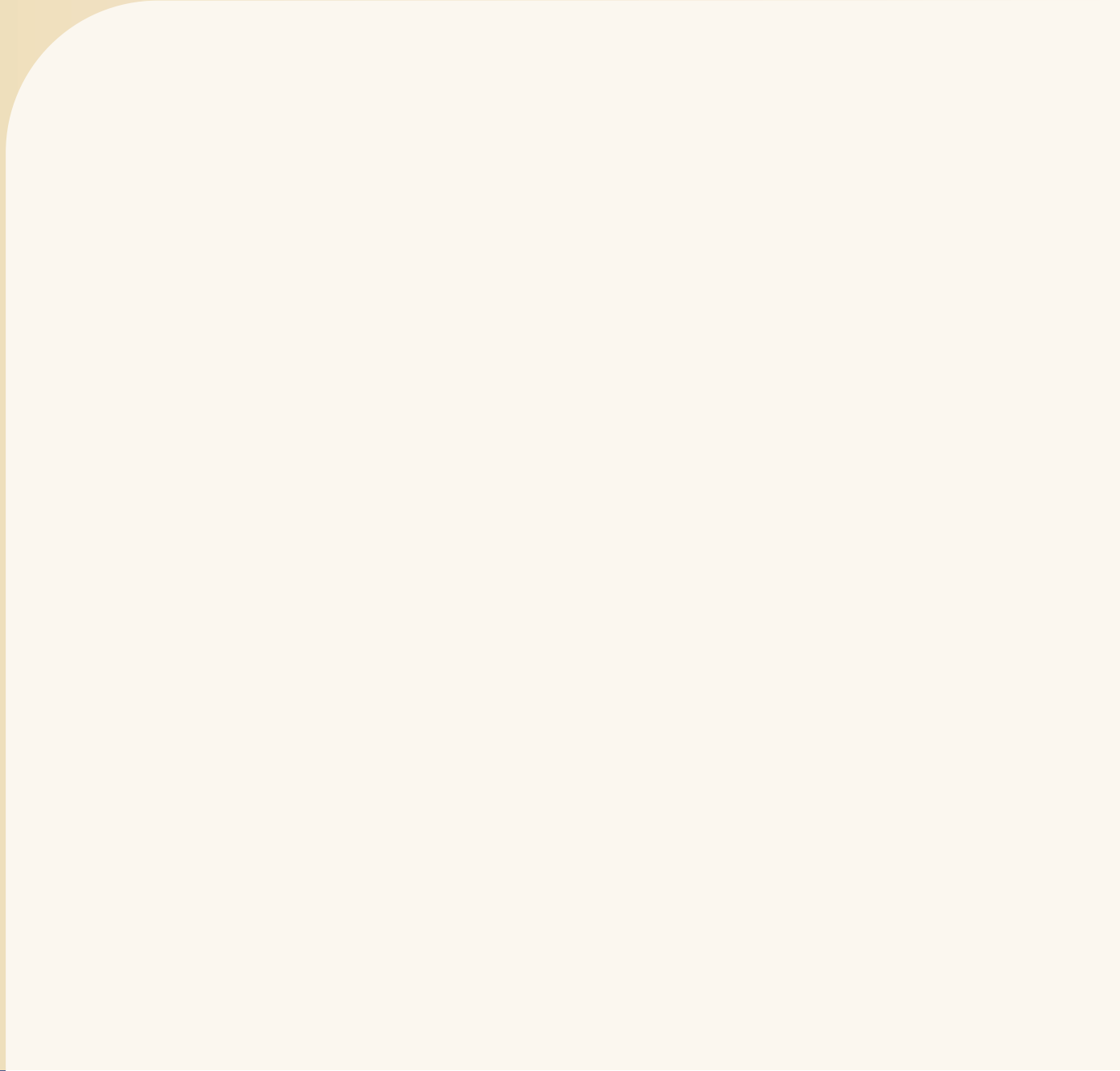
2.3.1 In deliberating on the possible exercise of MAS' emergency powers, it is important that MAS has access to all relevant information to allow MAS to make informed decisions in the best interests of the public.

2.3.2 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, for example where MAS wants to direct a DCH to take certain actions in an emergency, have not been provided for.

2.3.3 MAS therefore proposes to expand Section 143 and Section 144 of the SFA to provide for information-gathering powers under all circumstances where MAS exercises its emergency powers⁹.

2.3 MAS seeks views on the proposal to expand Section 143 and Section 144 of the SFA to provide information-gathering powers for all circumstances where MAS exercises its emergency powers.

⁹ Under the proposed amendments, Section 143 of the SFA will provide information-gathering powers in the circumstances where MAS exercises its powers under Section 32 (Power to prohibit trading in securities), Section 34 (Power to direct an AE in emergencies) and Section 81 (Power to direct a DCH in emergencies) of the SFA. Section 144 of the SFA will provide information-gathering powers in the circumstances where MAS exercises its powers under Section 34 and Section 81 of the SFA.



Monetary Authority of Singapore