

CONSULTATION PAPER

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**Policy
Consultation on
Amendments to
the SFA and the FAA**

MAS

Monetary Authority of Singapore

AMENDMENTS TO THE SECURITIES AND FUTURES ACT AND THE FINANCIAL ADVISERS ACT

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AMENDMENTS TO THE SECURITIES AND FUTURES ACT AND THE FINANCIAL ADVISERS ACT

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 We are carrying out the consultation in stages, and had released the first policy consultation paper in relation to amendments to the SFA and the FAA on 25 September 2006. This is the second policy consultation paper. We expect to release at least one further consultation paper in the coming months.

3 This second policy consultation paper covers the following areas:

- (a) Markets and clearing houses;
- (b) Licensing and business conduct rules;
- (c) Fidelity funds of securities and futures exchanges;
- (d) Market misconduct enforcement framework;
- (e) Regulation of offers of investments; and
- (f) Amendments to miscellaneous provisions.

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 chapters and/or sections that are of interest. Written comments should be submitted to:

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Market and Business Conduct Department
Monetary Authority of Singapore
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Email: sfa_faa06@mas.gov.sg
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MAS would like to request for all comments and feedback to be submitted by 16 January 2007.

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

AMENDMENTS TO THE SECURITIES AND FUTURES ACT AND THE FINANCIAL ADVISERS ACT

INTRODUCTION

This is MAS' second policy consultation paper in relation to proposed amendments to the Securities and Futures Act, Cap. 289 (**the "SFA"**) and the Financial Advisers Act, Cap. 110 (**the "FAA"**). This paper sets out the proposed amendments to be effected in five broad areas for comments and views, as well as highlights other drafting amendments MAS intends to make.

2 The five broad areas this policy consultation paper covers are:

- (a) Markets and clearing houses;
- (b) Licensing and business conduct rules;
- (c) Fidelity funds of securities and futures exchanges;
- (d) Market misconduct enforcement framework; and
- (e) Regulation of offers of investments.

Markets and Clearing Houses

3 Chapter 1 covers the proposed amendments to Part II, Part III and Part IIIA of the SFA, in relation to markets and clearing houses. The proposed amendments will affect position limits and trading limits, clarify how designated clearing houses should handle customers' money and assets, and set out the circumstances under which designated clearing houses can use customers' money in default situations. In addition, there are proposed amendments to give MAS the power to exempt

recognised market operators and holding companies of approved exchanges from certain SFA provisions.

Licensing and Business Conduct Rules

4 Chapter 2 covers proposed amendments to the SFA and the FAA in relation to licensing and business conduct rules. These proposed amendments aim to (i) enhance MAS' supervisory oversight of holders of capital market services and financial advisers' licences, (ii) provide greater clarity on licensing exemptions, and (iii) give MAS greater flexibility to keep pace with market developments. The proposed amendments clarify the requirements in the SFA and the FAA in relation to appointment of directors by holders of capital markets services licences and financial advisers' licences, propose possible consolidation of the business conduct rules for capital markets intermediaries and financial advisers in the subsidiary legislation, and propose a registration regime for representative offices. There are also proposed amendments relating to licensing exemptions for securities proprietary traders and third-party foreign research houses.

Fidelity Funds of Securities and Futures Exchanges

5 Chapter 3 covers proposed amendments to the provisions on fidelity funds of securities exchanges and futures exchanges.

Market Conduct

6 Chapter 4 covers proposed amendments to enhance the market misconduct enforcement framework. Part XII of the SFA prohibits market misconduct such as insider trading and market manipulation.

Market misconduct can result in either criminal prosecution or civil penalty actions, in addition to civil liability to affected investors. The proposed amendments introduce corporate derivative liability for companies that fail to take reasonable steps to prevent market misconduct, and provide for the transferability of evidence obtained in the course of investigations between the Commercial Affairs Department of the Singapore Police Force (“**CAD**”) and MAS. In addition, MAS proposes to empower the courts to (i) order a third party who has benefited from trades conducted in contravention of the market misconduct provisions to disgorge any gains, and (ii) disqualify a person convicted or found liable for any market misconduct contravention under the civil penalty regime from acting as a director of a company.

Offers of Investments

7 Chapter 5 covers proposed amendments relating to offers of investments, under Part XIII of the SFA. The proposed amendments are aimed at encouraging a more business-friendly approach to regulation. MAS proposes to introduce a new prospectus exemption based on investors’ financial knowledge and streamline the process for notification of changes in substantial shareholdings. Other proposed amendments include the introduction of a regime for the recognition of foreign business trusts, the removal of the audit requirement for half-year financial statements of debenture issuers, and changes to the regulatory regime for restricted schemes. MAS also discusses the rationale as to why a “materiality” qualification is not necessary under the civil liability provision for false or misleading statements or omissions in a prospectus.

Drafting Amendments and Clarifications

8 Chapter 6 lists other drafting amendments and clarifications that MAS intends to effect in the SFA and the FAA. These proposed amendments include provisions relating to investigations, market conduct and offers of investments.



Monetary Authority of Singapore