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Chapter 1: Markets and Clearing Houses

MAS

Monetary Authority of Singapore

CHAPTER 1: MARKETS AND CLEARING HOUSES

This chapter seeks comments on proposed amendments to Part II (Markets), Part III (Clearing Facilities), and Part IIIA (Approved Holding Companies) of the SFA.

Section A: Position Limits and Trading Limits

2 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. Primarily, Section 31(1) of the SFA provides MAS, as well as an approved exchange with the approval of MAS, the power to set position limits and trading limits for the purpose of diminishing, eliminating or preventing excessive speculation in any commodity under a futures contract.

3 MAS intends to amend this provision to clarify that the setting of position limits is primarily the responsibility of an approved exchange as the frontline regulator. 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 adequate management of risks, including risks in respect of position limits. 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.

4 As for trading limits, MAS recognises that while trading limits augment the function of position limits, other risk management

measures such as credit checks or caps may also be used to similar effect. MAS' intention is thus for approved exchanges to assess and ensure that appropriate and adequate controls are in place, which may include the stipulation of trading limits where relevant. MAS proposes to no longer have the power to set trading limits, approve trading limits set by an approved exchange, or prescribe other matters concerning trading limits.

5 In view of the above, MAS proposes that Section 31 of the SFA be amended to clarify that as part of the obligation of an approved exchange to manage its risks prudently, an approved exchange be obliged to :

- (a) Set and review position limits for futures contracts traded on its market; and
- (b) Ensure that the systems and controls concerning the assessment and management of risks to its market are adequate and appropriate for the scale and nature of its operations.

6 With the proposed amendments, sanctions for any breaches of position limits or trading limits set by an approved exchange should be enforced by the approved exchange rather than by MAS. MAS therefore proposes to delete Section 31(5) of the SFA which states that a person who has breached any position limit or trading limit set by MAS or an approved exchange has contravened the SFA.

1.1 MAS seeks views on the proposal to revise the position limits and trading limits provisions under Section 31 of the SFA to place primary responsibility for the setting of position limits on the approved exchange, and to remove statutory liability for the breach of position limits and trading limits.

Section B: Designated Clearing House's Handling of Customers' Money

7 Section 62 of the SFA 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**"). In particular, Section 62(2)(a) of the SFA requires a DCH to account for all customers' money and assets "*on an aggregated basis, separate from all other money and assets received by the DCH from the member*", while Section 62(2)(b) of the SFA provides that a DCH shall ensure that "*such money [assets] is deposited in a trust [custody] account*" to be held for the benefit of the customers and used only in respect of contracts of customers.

8 MAS has received feedback that the phrases "*account for all such money and assets on an aggregated basis*" and "*ensure that such money [assets] is deposited in a trust [custody] account*" could give rise to ambiguity on whether commingling of all customers' money and assets is allowed.

9 MAS considers that there is merit in providing greater clarity in the legislation given that this is a fundamental provision relating to the operation of a DCH. MAS thus proposes to amend Section 62(2) of the SFA to make clear that:

- (a) All customers' money and assets deposited with the DCH are to be held in trust and kept separate from all other money and assets, i.e. money and assets of members and their related corporations;
- (b) Separate books are to be kept for customers' money and assets deposited by separate members;
- (c) Commingling of all customers' money and assets deposited by members would be permissible; and
- (d) Aggregation of customers' money and assets deposited by a member for the purposes of bookkeeping would be permissible.

1.2 MAS seeks views on the proposal to amend Section 62(2) of the SFA to provide greater clarity on the required and permissible handling and bookkeeping of customers' money and assets by a DCH.

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

10 Section 63 of the SFA pertains to the use of customers' money and assets during an event of default should a member of a DCH fail to meet its obligations to the DCH, and provides that a DCH may use any customers' money and assets to meet the obligations of a member who has failed to meet obligations to the DCH (the "**defaulting member**") if the DCH has reasonable grounds for forming an opinion that:

- (a) The defaulting member had failed to meet obligations due to a customer's default on his obligations to the member; and
- (b) The failure to use customers' money and assets may jeopardise the financial integrity of the DCH.

11 MAS has received feedback that the condition in paragraph 10(b) – that a DCH have reasonable grounds for forming an opinion that its financial integrity may be jeopardised – could give rise to dispute as to what would constitute a failure that jeopardises the financial integrity of a DCH. As such, the DCH's legal right to carry out its default procedures, which may include the application of customers' money and assets against a default, may need clarification.

12 Given that a DCH is a systemically-important financial institution, MAS considers that it is necessary to provide legal certainty to a DCH to allow it to access all resources available to it in an event of default. This would enable a DCH to continue meeting its obligations following the event of default, and minimise the risk of transmitting further disruptions to other participants of the financial system. However, to prevent the indiscriminate use of customers' money and assets in a default situation, a DCH's access to customers' money and assets should be permissible only after a DCH has, as far as practicable, exhausted the defaulting member's own resources.

13 Accordingly, MAS proposes to amend the conditions in Section 63 of the SFA to allow the use of customers' money and assets where a DCH has reasonable grounds for forming an opinion that :

- (a) The defaulting member had failed to meet obligations due to a customer's default on his obligations to the member; and
- (b) (i) The DCH has, as far as practicable, exhausted the defaulting member's available money and assets against the default; or

(ii) The failure to use customers' money and assets may jeopardise the financial integrity of the DCH.

1.3 MAS seeks views on the proposal to amend 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.

Section D: Power to Exempt Recognised Market Operators from provisions in Part II of the SFA

14 The recognised market operator ("**RMO**") regime is a flexible regime for the regulation of market operators that do not pose systemic threat to the financial system of Singapore. Under Part II of the SFA, a RMO is subject to a baseline level of regulation, and may be subject to additional obligations commensurate with its level of activity and the risk it poses to the Singapore capital markets system. To enhance the flexibility of the framework for regulation of RMOs, MAS is of the view that it would be appropriate to allow for exemptions from provisions in Part II of the SFA. As such, MAS proposes to insert a specific provision

to allow MAS to exempt a RMO from any of the provisions in Part II of the SFA.

1.4 MAS seeks views on the proposal to provide MAS with the power to exempt RMOs from any of the provisions in Part II of the SFA.

Section E: Power to Exempt Holding Company of Approved Exchange or Designated Clearing House from Part IIIA of the SFA

15 Part IIIA of the SFA requires all holding companies of approved exchanges and DCHs, including direct and indirect holding companies, to apply to be approved holding companies (“**AHC**”s). In certain instances, for example where the holding company is already subject to MAS’ regulation, MAS is of the view that such a holding company can be exempted from regulation under Part IIIA of the SFA.

16 Accordingly, MAS proposes to insert a provision in the SFA to provide MAS the power to exempt a holding company of an approved exchange or DCH from regulation under Part IIIA of the SFA.

1.5 MAS seeks views on the proposal to provide MAS the power to exempt a holding company of an approved exchange or DCH from regulation under Part IIIA of the SFA.



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