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Chapter 2: Licensing and Business Conduct Rules

MAS

Monetary Authority of Singapore

CHAPTER 2: LICENSING AND BUSINESS CONDUCT RULES

This chapter sets out the key policy reforms to the licensing and business conduct rules under the SFA and the FAA. The proposed changes aim to (i) enhance MAS' supervisory oversight of holders of capital market services ("CMS") licences and financial adviser's ("FA") licences, (ii) provide greater clarity on licensing exemptions, and (iii) give MAS greater flexibility to amend legislation to keep pace with market developments.

Section A: Appointment of Directors by Holders of CMS Licences and FA Licences

2 Holders of CMS licences and FA licences are required under Section 96 of the SFA and Section 56 of the FAA to seek MAS' prior approval for the appointment of directors. This requirement recognises the important role that directors play in the operations of licensed entities.

3 MAS' policy intent behind the requirement remains unchanged. However, for greater clarity, MAS proposes to amend the requirements in the SFA and the FAA as follows:

- (a) Licence holders which are incorporated in Singapore would be required to seek MAS' prior approval for the appointment of all directors, regardless of the residency of the proposed director or the nature of the director's role in the licensed entity. However, where the licence holders operate in Singapore as branch offices of foreign companies, MAS' prior approval would only be required for

directors who are resident in Singapore and/or responsible for the operations of the Singapore branches; and

- (b) All licence holders, whether they are incorporated in Singapore or constituted as branches of foreign companies in Singapore, would be required to obtain MAS' prior approval for a change in their directors' appointment from a non-executive director to an executive director. However, where licence holders operate in Singapore as branches, they would only be required to seek approval if the changes pertain to directors who are resident in Singapore and/or responsible for the operations of the Singapore branches.

2.1 MAS seeks views on:

- (a) the proposal to clarify that licence holders that operate in Singapore as branches of foreign companies do not need to seek MAS' approval for the appointment of directors who do not have responsibility for the operations of the Singapore branch and are not resident in Singapore.
- (b) the proposal to require licence holders to obtain prior approval for material changes in the nature of their directors' appointments.

Section B: Consolidation of Business Conduct Rules

4 The business conduct rules for capital markets intermediaries and FAs are currently set out in Part VI of the SFA and Part III of the FAA, with further guidance spelt out in the SFR and the FAR.

5 To provide greater flexibility in adapting the business conduct rules to market developments and industry needs, MAS is studying the possibility of transferring certain business conduct rules in the SFA and the FAA to subsidiary legislation, where practicable and legally permissible. Some of the rules that are being considered for possible transfer to subsidiary legislation include SFA requirements on customer priority, dealing as principal, risk disclosure and issuance of contract notes. In respect of the FAA, one of the requirements being considered for possible transfer to subsidiary legislation is the provision relating to the maintenance of a register of interests in securities. The policy intent is not to change the substance of the requirements. The proposal is also consistent with the practice in other jurisdictions, where conduct rules are usually set out in subsidiary legislation, industry handbooks or guidance notes.

2.2 MAS seeks views on the proposal to consolidate the business conduct rules for capital markets intermediaries and financial advisers in subsidiary legislation. In particular, MAS invites comments on the specific requirements under the SFA and FAA that might be suitable for transfer to subsidiary legislation.

Section C: Licensing Exemption for Securities Proprietary Traders

6 Proprietary traders are required to be licensed in the securities market (unless they deal through certain persons such as regulated financial institutions) but not in the futures market, as set out in the Second Schedule of the SFR. Given that proprietary traders do not service customers, and trade using their own or their company's capital, MAS is proposing to exempt all proprietary traders from existing

licensing requirements and moving forward, the requirements under the proposed representative notification framework. Under the proposed changes, they would continue to be subject to market misconduct provisions in Part XII of the SFA. Such a proposal would be in line with the practices in other jurisdictions like Australia, Hong Kong and the United Kingdom (“UK”).

2.3 MAS seeks views on the proposal to exempt all proprietary traders from existing licensing requirements and the requirements under the proposed representative notification framework.

Section D: Registration of Representative Offices

7 MAS proposes to adopt a registration regime for representative offices (“ROs”) under the SFA. Under this proposal, foreign entities that are keen on exploring the viability of setting up a regulated entity in Singapore would be able to seek to register a RO with MAS. The acceptance of the registration by MAS would be required before the RO may commence its activities. RO arrangements are intended to allow companies to conduct limited activities, such as the collection of information on companies, economies and stock markets of Singapore and other countries in the region for a specified period. ROs would not be permitted to conduct activities that would otherwise be regulated under the SFA.

2.4 MAS seeks views on the proposed registration regime for the setting up of ROs in Singapore.

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

8 Research houses based overseas (“**foreign research houses**”) whose research reports are distributed by FAs in Singapore fall within the scope of the FAA. Where such foreign research houses are related corporations¹ of the FA in Singapore, the FAA exempts the related corporations from licensing². Where, however, such foreign research houses are not related corporations of the FA in Singapore (referred to in this consultation paper as “**third-party foreign research houses**”) the exemption does not apply.

9 In response to industry feedback, MAS proposes to exempt third-party foreign research houses from licensing requirements under the FAA where the research reports written by their analysts are distributed through FAs in Singapore. It is proposed that the exemption be subject to conditions that:

- (a) The research reports are distributed to only accredited, expert or institutional investors;
- (b) The third-party foreign research houses are subject to proper supervision by their home regulator;
- (c) The FAs in Singapore are authorised under the FAA to provide advice by issuing and promulgating research

¹ Related corporation is as defined under section 6 of the Companies Act (Cap. 50) (“CA”).

² Paragraph 11 of the First Schedule to the FAA states that a foreign company (within the meaning of section 4 (1) of the CA) whose provision of any financial advisory service is effected under an arrangement between the foreign company (on the one hand) and its related corporation which is licensed under the FAA or exempt under section 23 of the FAA (other than subsection (1)(f)) (on the other hand), where such arrangement is approved by the Authority, is an excluded FA.

analyses or research reports on investment products;

- (d) The FAs in Singapore accept full legal responsibility for the contents of the research reports through appropriate responsibility statements in the research reports, consistent with the practice in other developed markets;
- (e) The research reports would not be permitted to have contact details of the third-party foreign research house or its analysts ; and
- (f) The research reports are only in respect of securities which are either –
 - (i) not listed on an approved securities exchange; or
 - (ii) listed on an approved securities exchange and also listed on an overseas exchange where the relevant corporation to which the securities pertains, has its (a) entire operations; or (b) management and control, located in that overseas jurisdiction.

2.5 MAS seeks views on the proposal to grant licensing exemption to third-party foreign research houses to distribute their research reports in Singapore. In particular, MAS invites comments on the proposed conditions to be imposed for the exemption.



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