

CONSULTATION PAPER

P002 - 2008
May 2008

Proposed Exemption from Section 31 Banking Act for Stabilising Activities

MAS

Monetary Authority of Singapore

PREFACE

Section 31 of the Banking Act restricts a bank's equity investment in any single company to 2% of its capital funds, and is intended to limit concentration risks in the banks' equity portfolio investments. MAS Notice 625 further applies this restriction on a consolidated basis to a bank group. MAS is proposing to exempt from Section 31 of the Banking Act, shares acquired by a bank or a bank group during the course of price stabilization activities carried out in the role of a lead manager of equity issues, provided certain prudential safeguards are met.

2 MAS invites interested parties to forward their views and comments on the proposals made in this paper and draft amendments to the Banking Regulations, which are appended at Annex A for ease of reference. Electronic submission is encouraged. Please submit your written comments by 5 June 2008 to:

Prudential Policy Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Fax: 62203973
Email: policy@mas.gov.sg

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

1. INTRODUCTION

1.1 Section 31 of the Banking Act restricts a bank's equity investment in any single company to 2% of its capital funds, and is intended to limit concentration risks in the banks' equity portfolio investments. MAS Notice 625 further applies this restriction on a consolidated basis to a bank group. This paper reviews the need for such restrictions to apply in respect of price stabilisation activities, often undertaken by lead managers in relation to new issues of securities or sufficiently substantial public secondary offers.

1.2 It is normal market practice for lead managers of equity issues to undertake price stabilising transactions to support prices of the newly-issued securities for a limited period after commencement of the trading of the securities. Subject to appropriate safeguards and disclosure requirements¹, such activities help to maintain an orderly initial market and contribute to greater confidence of investors and issuers in the financial markets.

1.3 In the equity market, it is common to have an over-allotment before the commencement of trading, which creates a shortage of shares prior to the issue. To meet the over-allotment, the lead manager borrows shares from existing shareholders for a period of time. When trading of the shares commences, the lead manager may purchase the shares from the market to support the price of the issue, closing out its short position in the process. Such an arrangement allows the lead manager to perform price stabilization without running the risk of having a long position in the shares at the end of the stabilization period that he has to subsequently dispose of. For efficiency, it is common market practice for him to accumulate the shares purchased from the market before returning them to the share lender in a single transaction. The accumulation of such shares could result in a breach of the 2% equity limit under Section 31 of the Banking Act.

1.4 Often, the lead manager also obtains an option from the existing shareholders/issuers (prior to the issue) for him to acquire additional shares (up to the amount over-allotted) at the issue price. Commonly known as the Green Shoe option, this enables the lead manager to hedge the market risk in connection with the performance of price stabilization with over-allotment.

¹ These are found in the Securities and Futures (Market Conduct) (Exemptions) Regulations.

2 PROPOSED EXEMPTION FROM SECTION 31 OF THE BANKING ACT

2.1 As price stabilization activities are intended to maintain market confidence and facilitate the raising of capital, MAS proposes to exempt from Section 31 of the Banking Act, shares acquired by a bank or a bank group during the course of its price stabilization activities (“stabilising entity”) under the Securities and Futures (Market Conduct) (Exemptions) Regulations.

2.2 However, to ensure that the stabilizing entity is sufficiently insulated from any market risk arising from such activities, MAS proposes to require, as a condition of the exemption, that the total number of shares purchased by the stabilizing entity does not exceed the number of shares over allotted, and that the stabilizing entity have a Green Shoe option to purchase a number of shares equivalent to the number of shares over-allotted, at or below the issue price for each security.

Proposal: An exemption from Section 31 of the Banking Act for banks’ purchase of shares in the course of price stabilization activities under the Securities and Futures (Market Conduct) (Exemptions) Regulations, provided that –

- (a) the total number of shares purchased by the stabilizing entity does not exceed the number of shares over-allotted; and**
- (b) the stabilizing entity has a Green Shoe option to purchase a number of shares equivalent to the number of shares over-allotted, at or below the issue price for each share.**

3 IMPLEMENTATION

3.1 If implemented, the proposed exemption will be enacted through the Banking Regulations, a draft of which is provided in Annex A for reference. An existing provision in MAS 625 will extend any exemption made under the Banking Regulations to the bank group.

ANNEX A: DRAFT BANKING (AMENDMENT) REGULATIONS 2008

**DISCLAIMER: THIS VERSION OF THE REGULATION IS IN DRAFT FORM
AND IS SUBJECT TO CHANGE**

No. S 000 -

BANKING ACT
(CHAPTER 19)
BANKING (AMENDMENT)
REGULATIONS 2008

In exercise of the powers conferred by section 31(3)(c) of the Banking Act, the Monetary Authority of Singapore hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Banking (Amendment) Regulations 2008 and shall come into operation on 2008.

New Part IIA

2. The Banking Regulations (Rg 5) are amended by inserting, immediately after regulation 6, the following Part:

“PART IIA

EXCLUSION OF LIMITS ON EQUITY INVESTMENTS

Exclusion from operation of section 31 of Act for stabilising action during offer

6A.—(1) Section 31 of the Act shall not apply in respect of any equity investment in a single company acquired or held by any bank in Singapore when acting as a stabilising bank in relation to an offer of securities issued by the company for the specified period, where —

- (a) an over-allotment option has been made giving the stabilising bank the right to purchase a number of securities equivalent to the number of securities over-allotted —
 - (i) in a case where more than one tranche of securities is offered at different prices, at or below the issue price for each tranche; or
 - (ii) in any other case, at or below the issue price; and

- (b) the total number of securities subscribed for or purchased by the stabilising bank as a result of stabilising action does not exceed the number of securities over-allotted.
- (2) In this regulation, unless the context otherwise requires —
- “closing date” has the same meaning as in regulation 2 of the Securities and Futures (Market Conduct) (Exemptions) Regulations 2006 (G.N. No. S 148/2006);
- “dealer” means a person who is the holder of a capital markets services licence under the Securities and Futures Act (Cap. 289) to deal in securities, and includes a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities;
- “issue price”, in relation to securities being offered under an offer, means the price at which the securities are being offered for subscription or purchase;
- “issuer” has the same meaning as in regulation 2 of the Securities and Futures (Market Conduct) (Exemptions) Regulations 2006;
- “offer” has the same meaning as in regulation 2 of the Securities and Futures (Market Conduct) (Exemptions) Regulations 2006;
- “over-allotment” has the same meaning as in regulation 2 of the Securities and Futures (Market Conduct) (Exemptions) Regulations 2006;
- “overseas securities exchange” has the same meaning as in section 2 of the Securities and Futures Act;
- “relevant securities” has the same meaning as in regulation 2 of the Securities and Futures (Market Conduct) (Exemptions) Regulations 2006;
- “securities” and “securities exchange” have the same meanings as in section 2 of the Securities and Futures Act;
- “specified period” means a period of 30 calendar days —
- (a) from the date of commencement of dealing in the stabilised securities on a securities exchange; or
- (b) where the stabilised securities are listed on both a securities exchange and an overseas securities exchange, from the earlier of the dates of commencement of dealing in the stabilised securities on these exchanges;
- “stabilised securities”, in relation to any stabilising action, means the securities in respect of which the stabilising action has been, is being or will be taken, as the case may be;

“stabilising action”, in relation to an offer, means the action taken in Singapore or elsewhere by a stabilising bank, or by a dealer on behalf of the stabilising bank to buy, or to offer or agree to buy, any relevant securities on the securities market, in order to stabilise or maintain the market price of such securities in Singapore or elsewhere;

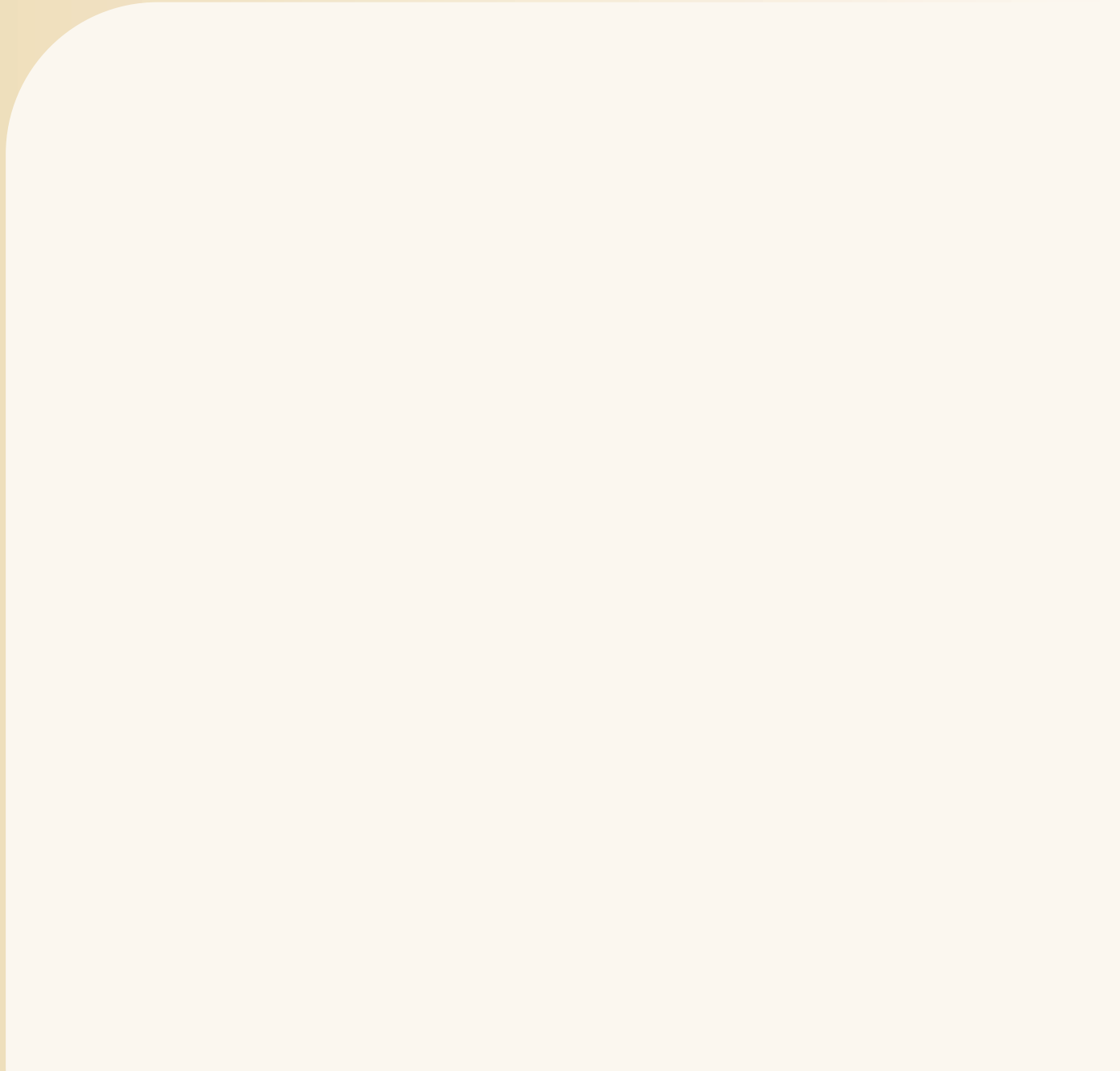
“stabilising bank”, in relation to an offer, means a bank in Singapore

-
- (a) which is appointed in writing by the issuer of an offer to take any stabilising action in respect of the offer; and
 - (b) whose appointment under paragraph (a) is notified to the securities exchange on which the relevant securities are or are intended to be listed before the closing date of the offer.”.

[G.N. Nos. S 622/2005; S 170/2006; S 325/2006]

Made this day of 2008.

HENG SWEE KEAT
Managing Director,
Monetary Authority of Singapore.



Monetary Authority of Singapore