RESPONSE TO FEEDBACK RECEIVED - CONSULTATION PAPER ON DRAFT SECURITIES AND FUTURES (LICENSING AND CONDUCT OF BUSINESS)(AMENDMENT) REGULATIONS 2007 AND FINANCIAL ADVISERS (AMENDMENT) REGULATIONS 2007

On 11 October 2007, MAS issued a consultation paper in relation to proposed amendments to the Securities and Futures (Licensing and Conduct of Business)(Amendment) Regulations 2007 and the Financial Advisers (Amendment) Regulations 2007 in the following areas:

(i) Licensing Exemption for Persons Conducting Fund Management;
(ii) Licensing Exemption for Persons Conducting Leveraged Foreign Exchange Trading and Advising on Corporate Finance;
(iii) Offences Regulations under the Securities and Futures (Licensing and Conduct of Business) Regulations ["SF(LCB)Regs"];
(iv) Fit and Proper Requirements in Relation to Certain Exempt Persons;
(v) Amendment to the Definitions of "Accredited Investor", "Expert Investor" and "Institutional Investor" in the Financial Advisers Regulations ["FAR"]; and
(vi) Amendment to Provision on Exemption for Giving Advice or Analysis on Bonds.

We thank all respondents for their feedback. Comments of wider interest together with MAS' responses are set out below.

1. LICENSING EXEMPTION FOR PERSONS CONDUCTING FUND MANAGEMENT

Exempt Fund Managers ["EFMs"] are persons resident in Singapore who conduct fund management on behalf of not more than 30 "qualified investors" pursuant to paragraph 5(1)(d) of the Second Schedule to the SF(LCB) Regs.

We proposed amendments to the definition of "qualified investor", as follows:

(i) A Collective Investment Scheme ["CIS"] that is not offered in Singapore will be considered a "qualified investor" only if the underlying investors into the CIS are all "accredited investors". Currently, this requirement already applies to CIS offered in Singapore. The proposed amendment is in line with MAS' policy intent that EFMs serve only investors who are able to safeguard their own interests.
(ii) A closed-end fund will be considered a "qualified investor" if the underlying investors into the closed-end fund are all "accredited investors". This addresses previous industry feedback that the treatment of closed-end funds and CIS should be aligned.
(iii) A corporation or entity which meets the definition of "accredited investor", and which is controlled by an EFM, its key officers, or its shareholders, will be considered a "qualified investor", only if the underlying investors in this corporation or entity are "accredited investors". This prevents EFMs from circumventing the clientele restriction by the use of innovative investment vehicles to target retail investors.

(a) Several respondents sought to clarify how many layers of underlying investors into a CIS or closed-end fund would be required to be "accredited investors", in order for the CIS or closed-end fund to be considered a "qualified investor".

MAS' Response:

A CIS or closed-end fund will be considered a "qualified investor" as long as the immediate underlying investors into the CIS or closed-end fund are "accredited investors". Hence, where a CIS or closed-end fund is invested in by a fund-of-funds or pension fund satisfying the definition of "accredited investor", there is no need for the underlying investors of the fund-of-funds or pension fund to be "accredited investors". Similarly, where an EFM undertakes fund management activity on behalf of a fund manager satisfying the definition of "accredited investor" (for example, under a sub-delegation arrangement), there is no requirement for clients of the fund manager to be "accredited investors". This is because the EFM in this case deals with the investment or management staff of the fund-of-funds or pension fund, and not directly with the underlying investors. The management team or board of directors of the fund in turn has fiduciary responsibility for and performs the duty of overseeing investment decisions on behalf of the underlying investors.

(b) Respondents also commented that it could be difficult for EFMs to determine if all underlying investors of CIS offered overseas are "accredited investors", for reasons of confidentiality.

MAS' Response:

The process of determining the status of underlying investors for CIS offered overseas should be no different from that of CIS offered in Singapore. An EFM is expected to put in place robust systems and processes to carry out KYC and due diligence checks on all its clients.

(c) Several respondents suggested that a CIS or closed-end fund offered overseas should be considered a "qualified investor", if the underlying investors into the CIS or closed-end fund being offered overseas satisfy criteria equivalent or comparable to "accredited investors" as defined under the SFA.

MAS' Response:

We are agreeable to the suggestion that a CIS or closed-end fund offered overseas be considered a "qualified investor", if all the underlying investors meet the criterion of "accredited investors" under the SFA or an equivalent class under the laws of the jurisdiction in which the CIS or closed-end fund is being offered. EFMs are expected to conduct adequate due diligence to assess whether a class of investors defined in a foreign jurisdiction is equivalent to "accredited investors" under the SFA. In making such assessment, EFMs should bear in mind the principle that this class of investors should be able to safeguard their own interests.

(d) It was suggested that EFMs should be permitted to manage funds offered to their employees, or to employees of the group, without requiring these employees to be accredited investors. Another suggestion was for a CIS or closed-end fund to be regarded as a "qualified investor", if underlying investors into the fund are "institutional investors" or "expert investors" as defined under the SFA, or "relevant persons" as mentioned in sections 275 and 305 of the SFA (who invest a minimum of S$200,000 per transaction).

MAS' Response:

These suggestions have broader implications for other parts of the SFA, including on licensing and business conduct requirements. We will need to undertake a broader review before reaching a policy decision.

2. LICENSING EXEMPTION FOR PERSONS CONDUCTING LEVERAGED FOREIGN EXCHANGE TRADING AND ADVISING ON CORPORATE FINANCE

We propose to require persons conducting leveraged foreign exchange trading or advising on corporate finance under paragraphs 4(1)(c) and 7(1)(b) of the Second Schedule to the SF(LCB)Regs to establish a presence in, and to operate out of, Singapore. This is to ensure that the exemption is not abused by fly-by-night operators or shell companies without a physical presence in Singapore.

Most respondents were supportive of the proposal. One respondent suggested that the proposal was not necessary as the exemption was only available to persons serving "accredited investors" who are able to safeguard their own interests. The respondent further commented that the operations of financial institutions are increasingly global and imposing the requirement could make Singapore less competitive as a financial centre.

MAS' Response:

As set out in our policy consultation, the proposed amendments aim to ensure that the persons relying on the exemptions are not shell entities. This is to minimize reputational risk to Singapore and ensure that financial institutions operating under the exemption regime are legitimate persons based in Singapore who conduct regulated activities under certain conditions.

3. OFFENCES REGULATIONS UNDER THE SECURITIES AND FUTURES (LICENSING AND CONDUCT OF BUSINESS) REGULATIONS

We propose to make non-compliance with requirements under paragraphs 4(6), 5(7) or 7(6) of the Second Schedule to the SF(LCB)Regs as offences. These requirements relate to the lodgement of forms with MAS for the purposes of commencement of business, changes of particulars, cessation of business, and annual declaration.

Most respondents were supportive of the proposal. One respondent commented that non-compliance with filing requirements would be an offence under the Securities and Futures Act and sought clarification on the need for the proposal.

MAS' Response:

The intention is for the Regulations to specifically provide for penalties in the event of a contravention of its provisions. The proposed amendments would also make it clear in the Regulations the maximum penalty that can be imposed on such exempt persons for non-compliance with the filing requirements.

4. FIT AND PROPER REQUIREMENTS IN RELATION TO CERTAIN EXEMPT PERSONS

We propose to extend fit and proper requirements to substantial shareholders of, and any other person who has effective control over, an exempt leveraged foreign exchange trader[1], an EFM, an exempt corporate finance adviser[2] and an exempt financial adviser serving not

[1] Exempted from licensing under paragraph 4(1)(c) of the Second Schedule to the SF(LCB) Regs.

[2] Exempted from licensing under paragraph 7(1)(b) of the Second Schedule to the SF(LCB) Regs.

more than 30 "accredited investors"[3] [collectively referred to as "exempt persons"]. This is because substantial shareholders of an exempt person and any other person who has effective control over an exempt person are able to affect and influence the way the exempt person functions.

Most respondents were supportive of the proposal. Several respondents commented that a substantial shareholder would typically not have the ability to direct or influence the way in which the business of an exempt person is conducted or affect the way the exempt person functions. These respondents suggested extending the requirement only to persons who can exercise effective control over the exempt person.

MAS' Response:
MAS has considered the comments received and is of the view that substantial shareholders of an exempt person should be fit and proper persons, for the same reasons that the key officers, directors and representatives of the exempt person are required to be fit and proper.

The amendments will better reflect MAS' expectations with regard to fit and proper requirements for licensed and exempt capital markets intermediaries and are in line with the requirements in other jurisdictions.

5. AMENDMENT TO THE DEFINITIONS OF "ACCREDITED INVESTOR", "EXPERT INVESTOR" AND "INSTITUTIONAL INVESTOR" IN THE FAR

We propose to align the definitions of "accredited investor", "expert investor" and "institutional investor" in the FAR with those under section 4A of the SFA. This is because the existing definitions in the FAR are more restrictive as they exclude certain categories of persons and do not provide MAS with the power to vary the definitions through subsidiary legislation.

Respondents were supportive of the proposal.

6. AMENDMENT TO PROVISION ON EXEMPTION FOR GIVING ADVICE OR ANALYSIS ON BONDS

We propose to rectify a technical error by deleting reference to section 25 of the Financial Advisers Act from regulation 28 of the FAR. The disclosure requirements of section 25 only apply to a collective investment scheme or a life policy (including a group life policy) and are not applicable to the provision of advice on bonds.

There were no objections to the proposal.

[3] Exempted from licensing under regulation 27(1)(d) of the Financial Advisers Act.