



RESPONSE TO FEEDBACK RECEIVED – POLICY CONSULTATION ON DRAFT REGULATIONS PURSUANT TO THE SECURITIES AND FUTURES ACT [“SFA”] AND THE FINANCIAL ADVISERS ACT [“FAA”]

On 16 June and 23 June 2009, MAS issued two consultation papers that proposed new regulations and amendments to certain existing regulations to support the amendments set out in the Securities and Futures (Amendment) Act 2009 [“SF(A)A”] and the Financial Advisers (Amendment) Act 2009 [“FA(A)A”].

MAS issued the first part of its response on 19 April 2010. The first part of the response addressed feedback received in relation to the draft Securities and Futures (Markets) Regulations 2009 and the draft Securities and Futures (Clearing Facilities) Regulations 2009 under the Securities and Futures Act. The first part of MAS’ response can be viewed at the following link:

http://www.mas.gov.sg/resource/publications/consult_papers/2009/ResponsetoFeedback.pdf

The second part of MAS’ response will address feedback on the policy consultation on 16 June 2009, and on the draft regulations in the 23 June 2009 consultation paper:

- Draft Securities and Futures (Licensing and Conduct of Business) Regulations 2009 [“draft SF(LCB)R”]
- Draft Securities and Futures (Capital Markets Services Licence and Representatives) (Transitional and Savings Provisions) Regulations 2009 [renamed as Draft Securities and Futures (Representatives)(Transitional and Savings Provisions) Regulations 2010] [“draft SF(T&S)R”]
- Draft Securities and Futures (Composition of Offences) Regulations 2009 [“draft SF(CO)R”]
- Draft Securities and Futures (Exemption from Requirement to be an Appointed, Provisional or Temporary Representative) Regulations 2009 [“draft SF(APT)R”]

- Draft Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations 2009 ["draft SF(FMR)R"]
- Draft Financial Advisers Regulations 2009 ["draft FAR"]
- Draft Financial Advisers (Licensed Financial Advisers and Representatives) (Transitional and Savings Provisions) Regulations 2009 [renamed as Draft Financial Advisers (Representatives)(Transitional and Savings Provisions) Regulations 2010] ["draft FA(T&S)R"]

No comments were received on the draft SF(T&S)R and draft SF(CO)R. MAS has reviewed and considered all comments received on the above mentioned Regulations. Where we agree with the comments, relevant amendments have been incorporated into the relevant regulations accordingly. Comments of wider interest together with MAS' responses are set out below.

Annex 1 lists the respondents who gave feedback on the proposed amendments to the above mentioned regulations . We thank all respondents for their feedback and comments.

Comments on

- (i) **Draft Securities and Futures (Exemption from Requirement to be an Appointed, Provisional or Temporary Representative) Regulations [“draft SF(APT)R”]**
 - (ii) **Draft Securities and Futures (Licensing and Conduct of Business) Regulations 2009 [“draft SF(LCB)R”] and Draft Financial Advisers Regulations 2009 [“draft FAR”] [herein referred to collectively as “the draft Regulations”]**
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I Representative Notification Framework [“RNF”]

1. Lodgment of Documents for Appointment of Representatives

MAS proposed that a financial institution [“FI”] which desires to appoint an individual as an appointed or provisional representative shall lodge the following documents with the MAS:

- a notice of intent to appoint the individual, and
- a certificate that the individual is a fit and proper person.

MAS also proposed that the FI retains copies of all information and documents which it relied on in giving the certification, for a period of 5 years after the certification is provided to the Authority.

Some respondents sought clarification on whether the above requirements are applicable only to licensed financial advisers [“FAs”] and capital markets services [“CMS”] licence holders.

One respondent sought confirmation on whether the Guidelines on Fit and Proper Criteria [FSG-G01] apply when an FI lodges the fit and proper certification for appointment of representatives.

Another respondent suggested that the draft Regulations be amended to explicitly state that the fit and proper certification by FIs is provided on “reasonable grounds”.

MAS’ response

The requirement to lodge the notice of intent and certification of fitness and propriety of the appointed or provisional representatives,

and the corresponding documentation and recordkeeping requirement, are applicable to licensed FAs and CMS licence holders; as well as to FIs exempted from licensing under section 23(1)(a) to (e) of the FAA and section 99(1)(a) to (d) of the SFA ["Exempt FIs"]. Exempt FIs include banks, merchant banks, insurance companies, insurance brokers and finance companies which conduct regulated activities under the SFA or FAA.

The Guidelines on Fit and Proper Criteria issued by MAS will apply to all relevant persons defined therein, including appointed, provisional and temporary representatives.

The requirement for FIs to appoint only fit and proper representatives is not new. In the preparation for the launch of the RNF, MAS has briefed FIs and written to their CEOs to remind them of MAS' expectations on the due diligence checks which an FI should undertake before providing the certification. MAS does not consider it necessary to circumscribe the basis of the certification.

2. Ongoing Obligation on FIs to Ensure Representatives are Fit and Proper

MAS proposed that all FIs are required on an ongoing basis to ensure that their representatives are fit and proper persons in relation to their acting as representatives.

One respondent sought clarification on the extent of monitoring required of an FI to ensure that its representatives are fit and proper. Some respondents suggested that ongoing monitoring efforts could take the form of self-declaration by representatives.

MAS' response

MAS' expectations for FIs to conduct ongoing fit and proper checks on representatives are not new. Exempt FIs are required under the existing Regulations to ensure that their representatives are fit and proper on an ongoing basis. Representatives of licensed FAs and CMS licence holders are currently subject to renewal of their licences every three years.

FIs should bear in mind that in appointing a representative to provide financial advice or services to consumers, FIs have a duty to ensure that consumers have confidence in the fitness and propriety of the

representative. As conveyed by MAS to the industry, merely relying on representatives' self-declaration is insufficient. FIs are expected to conduct adequate independent checks to satisfy themselves that their representatives meet the fit and proper requirements at notification and on an ongoing basis.

3. Duration of Appointment as Provisional Representatives

MAS proposed that an individual shall only be appointed as a provisional representative for a period not exceeding 3 months from the date the individual's name is entered in the public register of representatives ["Public Register"]. This is the grace period for the provisional representative to satisfy the examination requirements under the SFA Notice on Minimum Entry and Examination Requirements for Representatives of Holders of Capital Markets Services Licence and Exempt Financial Institutions, and/or the FAA Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers.

Some respondents asked whether the appointment period for provisional representatives could be extended beyond the stipulated 3-month period. One respondent sought clarification on whether the appointment period could be extended by another 3 months if the provisional representative took on an additional regulated activity during the 3-month period.

MAS' response

The 3-month period will not be extended. A provisional representative will not be allowed to take on any additional regulated activity during the 3-month period.

4. Minimum Period of Relevant Regulatory Experience of a Provisional Representative

MAS proposed that MAS shall refuse to enter an individual's particulars in the Public Register as a provisional representative in a regulated activity if he is not or was not previously licensed, authorised or otherwise regulated as a representative in a comparable regulated activity in a foreign jurisdiction for a minimum period of 12 months.

One respondent suggested that MAS consider reducing the relevant regulatory experience for a provisional representative from 12 months to 6 months.

MAS' response

MAS considers a period of 12 months to be a more meaningful timeframe to establish an individual's suitability. Hence, MAS will retain the minimum 12-month relevant regulatory experience criteria for provisional representatives.

5. Lodgment of Cessation Notice for Representatives

MAS proposed that an FI notify MAS of the cessation of its appointed, provisional or temporary representative no later than the next business day, after:

- (a) the representative ceases to be its representative; or
- (b) the representative ceases to provide any type of financial advisory service and/or carry on business in any type of regulated activity which he is appointed to provide or carry on business in.

Some respondents suggested that MAS consider extending the period of notification beyond one business day.

One respondent sought clarification on when they should lodge cessation notification for the case where the representative is suspended by the FI from selling particular products or from doing business pending termination.

MAS' response

The one working day notification period for cessation takes into consideration the importance of ensuring that the Public Register accurately reflects the status of a representative. It also facilitates the notification of any individual (whose representative status with his previous principal has ceased) by a new principal.

Under the RNF, when a representative changes his principal, the new principal is able to certify his fitness and propriety and submit the notification to effect the new appointment, only after he has ceased to be a representative of his previous principal. MAS had received feedback during the policy consultation in 2006 that delayed

notification by the previous principal may cause unnecessary delays in the appointment of the representative by the new principal. Shortening the current 14-day period (from effective date of cessation) for principals to notify MAS of the cessation to one business day addresses this feedback. Under the RNF, principals are able to lodge the cessation notice in advance when the representative is serving his notice of resignation.

A principal who, for whatever reasons, suspends a representative from selling particular products or from doing business should assess whether the representative is still fit and proper in relation to his acting as its representative. If a cessation notification is not lodged for the representative, his particulars will remain on the Public Register and the principal will remain responsible for supporting his continued inclusion in the Public Register. The principal should ensure it has adequate policies and procedures to enforce the suspension.

6. Notification of Changes in Representative's Particulars

MAS proposed that an FI notify MAS of any change in particulars specified in the relevant forms of its appointed, provisional or temporary representative within 14 days of the change.

One respondent proposed that notification of changes in representatives' particulars occur on a monthly basis within 7 days from a monthly cut-off.

Respondents suggested that MAS consider tying the notification obligation to when the FI is notified of the change in particulars of its representatives. Some have opined that the primary obligation for disclosing changes in particulars should fall on the representatives.

MAS' response

It is important for MAS to receive timely information on any changes in representatives' particulars. The time period for FIs to notify MAS of changes in representatives' particulars in the proposed draft Regulations will be retained.

The finalized Regulations will clarify that a representative is required to notify his principal of any change in his particulars within 7 days of the occurrence of the change. Where a representative notifies his principal on the 7th day from the effective date of change, the principal will still

have up to 7 days after being aware of the change to notify MAS accordingly.

7. Fees Imposed on Appointed or Provisional Representatives under FAA

The Second Schedule of the draft FAR sets out the proposed fees to be imposed on appointed or provisional representatives regulated under the FAA.

One respondent sought clarification on the amount of annual fees to be imposed on appointed and provisional representatives who conduct regulated activities under both the SFA and FAA.

MAS' response

Under the RNF, an appointed or provisional representative conducting regulated activities under the FAA will be imposed the annual fee for representatives under the FAA, i.e. S\$100. A representative conducting activities under both the SFA and FAA will be imposed the relevant annual fee under the SFA; the annual fee under the FAA will be waived.

8. Fees Imposed on Temporary Representatives

MAS proposed to impose on a temporary representative a fee ranging from S\$200 to S\$700, depending on the type of regulated activity he conducts.

One respondent asked that MAS pro-rate the fee payment for a temporary representative who carries on regulated activity for less than the full period of 3 months, or consider a fee schedule for temporary representatives that is lower than the annual fee schedule imposed on appointed representatives.

MAS' response

The proposed fees on temporary representatives in the draft SF(LCB)R will be reduced by S\$100 under the RNF, from the existing fees charged for such representatives under the licensing regime. MAS does not intend to pro-rate fees imposed on temporary representatives.

9. Public Register of Representatives

Under the RNF, a Public Register will be established where some information relevant to the representative may be published.

There were requests for clarification on information that will be published on the Public Register.

One respondent expressed concern that certain personal particulars of representatives submitted to MAS, such as information on a representative's spouse, may be reproduced on the Public Register.

MAS' response

The Public Register will allow the public to verify a representative's name; and his regulated activities and the FIs he has acted for as a representative (up to the preceding 3 years) under the RNF.

The Public Register will also allow the public to verify the following regulatory actions taken against the representative, if any:

- Prohibition Order ["PO"] issued to a representative by MAS (this information will be removed from the Public Register 5 years after the PO has expired);
- Revocation of a representative's status by MAS (this information will be removed from the Public Register 5 years after the revocation); and
- Status of a representative suspended by MAS.

The above information relating to the representative will be displayed only when his representative number is keyed into the search function of the Public Register.

Other particulars required to be submitted to MAS, including information on the representative's spouse, will not be published on the Public Register.

II Other Business Conduct Requirements

1. Forms to be Kept in Singapore

The existing Regulations require CMS licence holders and licensed FAs to maintain information in respective prescribed forms on an ongoing basis. MAS proposed that for forms that do not have to be lodged with

MAS, the completed forms, or copies of the completed forms, are to be maintained in Singapore.

Some respondents suggested that MAS consider doing away with the requirement for the forms to be kept in Singapore as long as copies of such forms are capable of being reproduced when required.

Another respondent asked whether the forms may be kept in electronic form.

MAS' response

MAS requires the forms to be kept in Singapore to ensure their prompt production upon MAS' request. The forms may be kept in electronic format by the licence holder provided the forms shall be produced at MAS' request with the certainty and turnaround time equivalent to that of having a physical copy kept and readily accessible in Singapore.

2. Clarification on the Meaning of "Non-customer"

MAS prohibits CMS licence holders as well as banks, merchant banks and finance companies exempted from holding a CMS licence from commingling moneys and assets received on account of their customers with non-customer moneys and assets. MAS had proposed to change the terms "its own funds" and "any asset belonging to the holder" in the existing SF(LCB)R to "non-customer funds" and "any non-customer assets" respectively in the draft SF(LCB)R.

Two respondents sought clarification on the definition of the term "non-customer" in the draft SF(LCB)R.

MAS' response

"Non-customer" is intended to be one who does not fall under the definition of "customer" in regulation 15(1) of the SF(LCB)R.

For avoidance of doubt, the amended SF(LCB)R will use the term "other funds" and "other assets" which will clearly mean funds or assets other than those belonging to the "customer" defined in regulation 15(1) of the SF(LCB)R.

3. Unsecured Loans

The draft FAR prohibited a licensed FA from granting any unsecured advance, unsecured loan or unsecured credit facility exceeding S\$3000 or such other prescribed amount to its officer, employee or representative.

One respondent suggested that licensed FAs be permitted to grant unsecured loan of up to half a month of salary to an employee.

MAS' response

The draft FAR reflects the current requirement in the FAA.

The principal activity of a FA is to provide investment advisory services. Licensed FAs should exercise due care in granting advanced loans to staff; such loans should be granted sparingly and with good justification. MAS does not intend to raise the ceiling on unsecured advance, loan or credit facility that a licensed FA is permitted to grant to its employees.

4. Definition of "customer's assets"

MAS proposed to align the definition of "customer's assets" in the draft SF(LCB)R with the definition of "customer's assets" in the SFA. The existing SF(LCB)R defines "customer's assets" as securities and assets (other than money) that are beneficially owned by a customer of the holder. "Customer's assets" in the SFA refers to any asset (other than money) deposited with a CMS licence holder in the course of its business, for which the CMS licence holder is liable to account to its customer, and any other assets accruing therefrom, regardless of whether the customer is the beneficiary owner.

One respondent provided feedback on possible unintended legal consequences which may arise from the proposed definition of "customer's assets" in the draft SF(LCB)R.

MAS' response

Taking into account the concerns expressed over possible unintended consequences of the amendment, MAS has decided to retain the definition of "customer's assets" in the existing SF(LCB)R.

Comments on Draft Financial Advisers (Representatives) (Transitional and Savings Provisions) Regulations 2010 [“draft FA(T&S)R”]

1. Return of Representative’s Licences to MAS

MAS proposed to require any representative whose licence is in force immediately before the date the RNF is implemented to return the licence to his principal not later than 14 days after the RNF implementation date. FIs are required to collect and return these licences to MAS not later than one month after the RNF implementation date.

MAS also proposed that any representative who, without reasonable grounds, fails to return his licence shall be guilty of an offence and shall be liable on conviction to a fine.

One respondent suggested that MAS remove the penalty provision for representatives in view that the return of licences is consequent to the implementation of the RNF.

MAS’ response

MAS requires the return of all obsolete physical licences, to prevent possible misrepresentation by any holder of such licence on his licensing status.

The requirement on a representative to return his licence under certain circumstances, and penalty for failure to do so, are not new.

A representative of a licensed FA or CMS licence holder is currently required to return his licence to MAS when he applies to vary his licence, ceases to conduct any regulated activity, or when his licence is due for renewal. Failure to do so without reasonable grounds would subject the representative to a fine.

MONETARY AUTHORITY OF SINGAPORE

19 October 2010

ANNEX 1

LIST OF RESPONDENTS TO CONSULTATION PAPERS ISSUED ON 16 AND 23 JUNE 2009

- Bank of Communications Co Ltd, Singapore Branch
- DBS Bank Ltd
- DBS Vickers Securities (Singapore) Pte Ltd
- Great Eastern Life Assurance Co Ltd
- ipac financial planning Singapore private limited
- Macquarie Capital Securities (Singapore) Pte Ltd
- MQ Specialised Investment (Singapore) Pte Ltd
- Macquarie Capital (Singapore) Pte Ltd
- Macquarie Infrastructure Management (Asia) Pty Ltd, Singapore Branch
- Phillip Securities Pte Ltd
- Singapore Exchange Limited
- The Association of Banks in Singapore
- The Bank of Tokyo-Mitsubishi UFJ Ltd, Singapore Branch

This list includes only the names of respondents who did not request that their submission be kept confidential. MAS thanks all respondents for their feedback.