RESPONSE TO FEEDBACK RECEIVED – POLICY CONSULTATION ON REVIEW OF THE REGULATORY REGIME GOVERNING THE SALE AND MARKETING OF UNLISTED INVESTMENT PRODUCTS (PART II)

On 12 March 2009, MAS issued a policy consultation paper to propose enhancements to the regulatory framework for unlisted investment products. The proposals focused on promoting effective disclosure by improving the quality of information available to investors, strengthening fair dealing in the sale and advisory process and enhancing MAS' powers under the Financial Advisers Act ("FAA").

MAS issued the first part of its response on 8 September 2009. The first part addressed feedback on the proposals to:

(a) promote more effective disclosure, including the introduction of a Product Highlights Sheet, new ongoing disclosure requirements, and restrictions on marketing and advertising materials;

(b) strengthen fair dealing in the sale and advisory process, including enhanced requirements for the due diligence of new products and the advisory process, restrictions on sale without advice, and restrictions on bank teller activities;

(c) introduce the concept of a complex investment product and enhanced competency requirements for representatives selling complex investment products; and

(d) introduce a cooling off period of seven days for unlisted debentures.

This is the second part of MAS' response. It addresses feedback on the proposals:

(a) on the definition of "complex investment products", mandatory advice for the sale of complex investment products, and "health warnings" for complex investment products and risk rating of retail investment products;

(b) on remuneration structures for the sale of investment products;

(c) to appoint an approved trustee for unlisted debentures; and

(d) to strengthen MAS' powers to investigate and take regulatory actions.

Annex 1 lists respondents to the consultation paper issued on 12 March 2009. Comments of wider interest and our responses are set out in the sections below.

The scope of the consultation paper published on 12 March 2009 did not include listed investment products. MAS had indicated our intention to consider whether enhancements would be required for listed investment products. After careful consideration, MAS has decided to issue a revised package of proposals that aim to enhance safeguards for retail customers for a wider range of investment products. These revised proposals will apply to both listed and unlisted investment products.

MAS is proposing that intermediaries obtain from retail customers information that is necessary to ascertain the customers' knowledge or experience before selling an investment product to them. In the case of unlisted investment products, where the customer is assessed not to possess the relevant knowledge or experience, the intermediary is required to advise whether the specific investment product is suitable for the customer if the product is to be made available to the customer. In the case of listed investment products, where the customer is assessed not to possess the relevant knowledge or experience, the intermediary would need to consider the customer's personal circumstances in deciding whether to approve the customer's trading account. Safeguards would be required where the intermediary approves the account.

These revised proposals are being consulted in the *Consultation Paper on Regulatory Regime for Listed and Unlisted Investment Products* published on 28 January 2010.

CONSULTATION PAPER SECTION 3: PROPOSALS TO PROMOTE MORE EFFECTIVE DISCLOSURE

Update on Product Highlights Sheet

MAS has been working with financial institutions and a workgroup comprising representatives from the financial services industry to develop the proposed format and content of the Product Highlights Sheet. Together with industry, we have developed sample Product Highlights Sheets. We have engaged a market research firm to conduct consumer testing on these sample Product Highlights Sheets to test their effectiveness in assisting investors to understand the risks and features of the products.

MAS intends to widen the application of the Product Highlights Sheet beyond unlisted investment products. A Product Highlights Sheet will be required for all debentures in the form of asset-backed securities and structured notes (including exchange-traded notes), collective investment schemes ("CIS") (including exchange-traded funds), and sub-funds of investment-linked life insurance policies, for which the offer requires a prospectus to be issued. These proposed requirements are being consulted in the *Consultation Paper on Regulatory Regime for Listed and Unlisted Investment Products* published on 28 January 2010.

CONSULTATION PAPER SECTION 4: PROPOSALS TO STRENGTHEN FAIR DEALING IN THE SALE AND ADVISORY PROCESS

Remuneration for Sale of Investment Products

MAS asked for suggestions on how remuneration structures can better align the interests of representatives with those of customers.

Many respondents suggested variations to a commissions-based model such as caps to commissions, percentage of "assets under advice", amortisation of commissions over a period as well as claw-back provisions. A few respondents advocated tying commissions to the investment's long-term performance and non-payment of commissions for zero or negative investment returns.

Many respondents acknowledged the benefit of having customers pay fees for advice to minimise product bias and to better align the interests of representatives with those of their customers. However, a few respondents were of the view that customers in Singapore would not be willing to pay for advice. They also raised concerns about the availability and costs to retail customers of engaging professional fee-based representatives.

Several respondents were of the view that it would be more useful for MAS to set out broad principles on remuneration structures as guidance for the industry than to prescribe in regulations how representatives should be remunerated. Several respondents felt it was unrealistic to expect remuneration structures to align the interests of representatives with those of customers.

MAS' Response

How remuneration is structured is an important issue. This has wide ranging ramifications not only for financial advisers ("FAs") but also for the investing public. MAS acknowledges the divergent views on remuneration structures for representatives.

While we note the arguments in favour of a "fee-for-advice" remuneration structure, we are mindful of unintended consequences such as restricting consumers' access to advice due to potentially higher costs of financial advisory services. We also acknowledge the concern regarding the viability of imposing a "fee-for–advice" remuneration structure in Singapore. We note that some jurisdictions have indicated intentions to ban commissions over the next few years.

The Association of Banks in Singapore, in its press release of 7 July 2009, stated that banks are moving towards the use of balanced scorecards to determine representatives' remuneration. The performance of representatives will not be assessed based on sales factors alone. Other factors they will be assessed on include competency and compliance with

the Guidelines on Fair Dealing – Board and Senior Management Responsibilities for Delivering Fair Dealing Outcomes to Customers.

FAs are currently required to disclose remuneration received by the FA company that is directly related to the FAs' recommendations on an investment product. This is to make customers aware of the costs of financial advisory services rendered and take into account such costs when making investment decisions. MAS has decided not to be more prescriptive in this area at this time.

MAS is of the view that FAs should implement remuneration structures that better align the interests of representatives with those of customers. This is part of a financial institution's Board and senior management responsibilities for delivering fair dealing outcomes[1] to their customers. FAs should disclose to their customers sufficient information on how their representatives are remunerated so that customers have assurance that their representatives are not biased towards recommending certain investment products.

As a supervisory matter, we will scrutinise the steps taken by the Board and senior management to achieve fair dealing outcomes to determine whether further measures are required. MAS will also continue to monitor developments in other jurisdictions relating to the disclosure and structure of representatives' remuneration.

CONSULTATION PAPER SECTION 5: ADDITIONAL PROPOSALS FOR COMPLEX INVESTMENT PRODUCTS

Definition of "Complex Investment Products"

MAS proposed a definition of "complex investment products" based on whether derivatives are embedded in the investment product. The sale and marketing of complex investment products would be subject to the following requirements:

(a) Distributors must ensure that complex investment products are only sold to investors with financial advice;

(b) Issuers must include a "health warning" on the prospectus, Product Highlights Sheet and all marketing and advertising materials that the product being offered is a complex investment product; and

(c) Representatives must have undergone adequate training and have the competencies to sell complex investment products.

[1] Guidelines on Fair Dealing – Board and Senior Management Responsibilities in Delivering Fair Dealing Outcomes to Customers.

Many respondents pointed out that the proposed "complex investment product" definition would capture a large number of products as most products in the market use some form of derivatives. Many respondents also noted that some derivatives are simple and easily understood.

There was a general concern that investors may be led to think that complexity equates risks and that complex investment products are necessarily more risky.

Mandatory Advice

Additional Safeguards

Several respondents agreed with the proposal that complex investment products should be sold only with advice. A large number of respondents suggested that this requirement be imposed only in cases where complex investment products are sold to vulnerable investors. A few respondents suggested that MAS adopt the European Union Markets in Financial Instruments Directive ("EU MiFID") approach of allowing "complex products" to be sold without advice to retail customers if the distributor has performed an appropriateness test to determine whether the customer has the appropriate knowledge and experience to purchase the product.

Most respondents were in favour of additional safeguards for customers with limited knowledge of investment products. Several respondents cautioned on the practical difficulties in assessing customers' knowledge and the risk of offending customers by classifying them as customers with limited knowledge of investment products. A few respondents commented that it would be useful to have a standardised definition of a customer with limited knowledge.

Online Distribution

MAS also asked for suggestions on how proposals for mandatory advice may be adapted for online distributors. A few respondents suggested following the EU MiFID and UK regulatory models where the distributor must first perform an appropriateness test to determine whether the customer has the knowledge and experience to understand the risks involved and purchase the product. The online distributor could assess the suitability of the customer for purchasing complex investment products at the account-opening stage. Such an assessment could then be valid for a fixed period of time, after which an update would be required.

A few respondents suggested implementing safeguards at the point of transaction on the online portal such as health warnings for the customer to seek financial advice, restrictions on the amount of investment or limiting access to certain type of customers. One respondent suggested having a representative of the online distributor call the customer to confirm that the

customer understands the nature and risks of the investment before processing the customer's order.

A number of respondents called for a level playing field for the distribution of investment products. Similar to brick–and-mortar FA operations, some respondents contended that online distribution of complex investment products on an "execution-only" basis should not be allowed since the sale of such products would only be allowed with advice.

"Health Warning"

MAS proposed to incorporate a "health warning" in all disclosure documents and marketing and advertising materials of complex investment products to alert investors that the features and risks of a "complex investment product" may not be easily understood and that investors should not purchase such a product if they are unable to fully understand the product.

Most respondents were in favour of the proposal for a "health warning" in disclosure documents. A large number of respondents raised concerns that the minimum font size may be impractical for newspaper and television advertisements. For CIS, a few respondents commented that a "health warning" on the cover page of an umbrella fund prospectus may be misleading as not all the sub-funds within an umbrella fund are complex investment products.

A few respondents suggested amendments to the text of the "health warning". They suggested amending the proposed sentence, "This product cannot be sold to you unless your financial adviser has explained whether this product is suitable for you", to "You cannot purchase this product unless your financial advisor has explained whether this product is suitable for you". This is to emphasise to investors their responsibilities to understand the investment product before purchasing it.

Several respondents commented that labelling a large number of products in the market as complex would render the "health warnings" meaningless as investors may come to ignore such boilerplate "health warnings".

<u>MAS' Response on the Definition of "Complex Investment Products", Mandatory Advice and "Health Warning"</u>

MAS has given careful consideration to the feedback and has reviewed the initial proposals. We have also considered whether enhancements would be required for the sale and marketing of listed investment products to retail investors. MAS will not proceed with the proposal to define "complex investment products" and its related proposals. We propose to replace these proposals with a revised package of proposals to enhance safeguards for retail investors for a wider range of investment products. These proposals are set out in the *Consultation Paper on Regulatory Regime for Listed and Unlisted Investment Products* published on 28 January 2010.

As we will not be proceeding with the proposal to require a "health warning" in disclosure documents, MAS will focus on developing guidelines on clearer product labelling for investment products with industry to safeguard retail investors' interests.

Update on Risk Rating

In the first part of MAS' response, MAS acknowledged the divergent views on the potential benefits of a risk rating system to retail investors. We also stated that we had decided to undertake further analysis of the issues before forming a policy position.

MAS commissioned a consultant to review whether an independent rating framework for investment products sold to retail investors would be useful in Singapore. In summary, the consultant's findings demonstrate that current risk ratings have the following shortcomings:

(a) focusing on market risk only, which contributes to the neglect of other risks and over-simplification of risks;

(b) ineffective in addressing diverse investor needs and objectives;

(c) limited ability to be forward-looking;

(d) difficulties in capturing tail risk;

(e) difficulties in proactively reaching out to investors; and

(f) typical lack of independence of the risk rating provider.

The consultant was of the view that it would be difficult to design and implement a rating that is both comprehensive and practical for use by retail investors. Retail investors may not fully understand or be able to easily use complex multi-dimensional risk ratings in making investment decisions as it would need to be accompanied by detailed explanations. The rating would also not capture other components such as returns and fees, investment risk from a portfolio perspective and an investor's investment objectives and time horizons. For these reasons, the consultant recommended that a risk rating system not be introduced at this time. MAS will therefore not proceed to implement a mandatory risk rating framework for investment products.

Update on Enhanced Competency Requirements for Representatives

In the first part of MAS' response issued on 8 September 2009, we stated that we would proceed to introduce a new Capital Markets and Financial Advisory Services ("CMFAS") module for product knowledge on complex investment products. New and existing representatives would be required to pass the new CMFAS module for complex investment products before they

are allowed to sell complex investment products. Distributors would also be required to ensure that representatives undergo training on the features and risk-reward characteristics of a new investment product before being allowed to offer the product to retail customers.

We consider it important to raise the minimum competency standards for representatives. The proposals to enhance the competency requirements for representatives are set out in the *Consultation Paper on Regulatory Regime for Listed and Unlisted Investment Products* published on 28 January 2010.

CONSULTATION PAPER SECTION 6: ADDITIONAL PROPOSALS FOR UNLISTED DEBENTURES

Appointment of Approved Trustee

Currently, there is no requirement for issuers of unlisted debentures to appoint a trustee. MAS proposed to require issuers of unlisted debentures, where the offers require a prospectus to be issued, to appoint a trustee approved by MAS.

We also proposed to provide more specifically that the relevant trust deed must contain a covenant binding the trustee to exercise all due diligence and vigilance in carrying out its functions and duties, and in safeguarding the rights and interests of investors in the unlisted debentures at all times. In addition, where the unlisted debentures is secured on collateral which has a trustee acting on behalf of the collateral holders ("collateral trustee"), the trustee for the unlisted debentures must ensure that the collateral trustee is subject to equivalent or higher duties and obligations. A trustee must ensure that it has the necessary expertise and sufficient powers under the trust deed to allow it to meet these obligations.

MAS will be empowered to issue directions to the trustee to act in the public interest.

Many respondents commented that the proposal would result in increased costs which outweigh the benefits to investors. Some respondents commented that trustees are necessary only where the debentures are offered by Special Purpose Vehicles ("SPVs") or are collateralised. For global programmes, respondents highlighted that the trustees are usually offshore. The requirement for a MAS-approved trustee would be costly, rendering the Singapore market unattractive for offer of unlisted debentures. A few respondents also suggested that the exemptions from the trustee requirement currently available for listed debentures[2] should similarly apply

[2] The listing rules requiring the appointment of a trustee do not apply to (i) an issuer who is a bank licensed under the Banking Act or any entity which has been declared by MAS to be a prescribed entity; and (ii) a debt issue that is offered only to sophisticated or institutional investors and is traded in a minimum board lot size of S$200,000 or its equivalent in foreign currencies following listing.

to unlisted debentures. A respondent raised the concern that trustees may incur liability as a result of acting on directions by MAS and should be accorded statutory protection from such liability.

MAS' Response

MAS would like to clarify that the proposed requirement for a trustee was intended to only apply where the offers require a prospectus to be issued. For offers made only to accredited or institutional investors, or which are offered under a prospectus exemption under the SFA, no trustee would be required.

We have considered the concerns highlighted by respondents. While we recognise that some of these concerns are legitimate, we remain of the view that without the presence of a trustee, the rights of individual retail debtholders may not be adequately protected or represented in their relationship with the issuer of that debt. There is a need for a single trustee who has the legal right and obligation to take timely collective action on behalf of multiple debtholders who themselves may individually not be well-organized or even aware that a default has occurred.

Accordingly, we will proceed with the requirement for issuers of unlisted debentures, where the offers require a prospectus to be issued, to appoint a trustee. MAS considers that the same requirement should also apply to all listed debentures as there is a similar need for a trustee to take actions on behalf of the individual retail debtholders involved.

In addition, where the debentures are issued by SPVs or are secured on collateral, we will require the appointed trustee to be based in Singapore. This enables Singapore debtholders to better engage the local trustee in the event of a default and the trustee is required to take steps to enforce the collateral which may be held overseas. Where the debentures are not collateralised, the role of the trustee is generally limited to filing of claims on behalf of debtholders. In such cases, unless the debentures are issued by an SPV, we would allow a foreign trustee to be appointed provided the issuer is satisfied that the trustee is obliged to take timely and appropriate action on behalf of debtholders in the event of a default.

We have also decided not to require a debenture trustee to be approved by MAS. We recognise that unlike trustees for CIS who, in addition to their customary duties also have obligations to exercise oversight over the fund manager, a trustee for debenture generally plays a more passive role during the term of the debenture. As such, we do not see a need to subject debenture trustees to MAS' oversight.

Nonetheless, to ensure that the rights and interests of investors are adequately protected, we will impose the specific duties (as set out in our consultation paper) on all debenture trustees. Respondents had also expressed concerns that trustees may incur liability as a result of acting on

directions from MAS. To address this, we will consider providing statutory protection to trustees from liabilities incurred as a result of taking bona fide actions in compliance with MAS' directions.

CONSULTATION PAPER SECTION 7: PROPOSALS TO ENHANCE MAS' POWER

Introduction of Civil Penalty Regime in the FAA

MAS proposed to introduce a civil penalty regime in Part III of the FAA. The purpose was to allow MAS greater flexibility in choosing an appropriate response to breaches of Part III of the FAA. MAS also proposed to provide for civil penalty settlements, enhanced investigation powers under the FAA, and provisions to provide for the transfer of evidence between the Commercial Affairs Department ("CAD") and MAS.

A few respondents acknowledged that introducing a civil penalty regime in the FAA would provide MAS with greater flexibility in exercising MAS' powers. There were also a number of respondents who expressed support for the proposal as it would level the playing field between the SFA and the FAA.

However, many respondents expressed reservations that MAS' proposal to introduce a civil penalty regime in Part III of the FAA signalled a shift towards a more litigious approach for the financial sector. They were concerned about the lower burden of proof required to establish civil penalty liability as compared to criminal liability. Given the potential consequences of an adverse finding on a financial institution's reputation, a few respondents were of the view that the lower burden of proof was not appropriate.

Many respondents were of the view that as the nature of offences under the SFA differed from the FAA, the imposition of a civil penalty regime under the FAA would be inappropriate. For instance, SFA offences like market rigging and insider trading would generally have more significant and wide-spread consequences for the market. A few respondents commented that offences under the SFA would often involve malicious intent and have an element of fraud or sharp practice, while offences under the FAA would usually turn on negligence or omission. Contraveners of the SFA would also typically be members of the public, for which investigations and identification of the contraveners could prove more difficult. By contrast, contraveners of the FAA would be FAs under MAS' regulatory ambit.

One respondent expressed the view that MAS' proposal to enhance its investigation powers under the SFA that would, for example, enable MAS to take statements, should not proceed as these are powers granted to criminal investigation authorities. Should MAS have such powers, safeguards such as protecting privileged communications between a FA and its legal adviser should be included in the FAA, as it is under section 153 of the SFA.

MAS' Response

MAS notes the comments by some respondents that both the nature of offences and entities in relation to provisions under the FAA differ from those under the current market misconduct framework of the SFA. In particular, MAS notes comments that persons subject to the FAA are generally persons regulated by MAS. On further consideration, MAS is of the view that there may be more appropriate ways to enhance MAS' powers and sanctions for breaches of the FAA by regulated persons. MAS will re-consider the issue of how best to enhance MAS powers to achieve a higher level of deterrence of misconduct by FAs. One aspect we will explore further is the range and scope of administrative sanctions available to MAS. Accordingly, MAS will not be proceeding with the proposal to introduce a civil penalty regime for the FAA at this time. MAS will consult on any proposed changes to administrative sanctions as a separate public consultation exercise.

We would like to clarify that Part VI Division 3 of the FAA already confers upon MAS powers to conduct investigations as necessary or expedient for the performance of MAS' functions, to ensure compliance of the FAA and to investigate suspected contraventions of the FAA. MAS' intention is to propose amendments to more clearly set out in legislation the investigation framework and investigation procedures under the FAA. MAS will be proceeding with the proposal to amend the FAA to make clear the safeguards and rights persons have in the examination process under the FAA. These will be similar to the provisions in the SFA. MAS will consult on the legislative drafting for these provisions prior to implementation.

Remedies for Investors

Civil Liability Claims by Investors

The market misconduct provisions of the SFA and section 27 of the FAA provide affected investors a statutory cause of action beyond common law, under which a contravener may be liable to pay compensation to any person who has suffered loss, whether or not the contravener has been convicted or has had a civil penalty imposed. MAS proposed to widen the application of civil liability to other provisions in Part III of the FAA.

A few respondents expressed the view that increasing the number of instances of applicability of civil liability means there is increased risk of civil liability to FAs. This could lead to increased legal insurance and indemnity costs which would discourage FAs from distributing unlisted investment products. A few other respondents were of the view that this proposal would encourage litigation on the part of investors. One respondent suggested including a specific provision in legislation to give an investor the right to claim for the value of the investment in exchange for surrendering the investment product to the FA.

In conjunction with providing civil liability recourse to investors, MAS proposed introducing a provision similar to section 7(9) of the Consumer Protection (Fair Trading) Act ("CPFTA"). This would enable a court, in making an order in an action filed under a FAA civil liability provision, to have regard to whether an investor had made a reasonable effort to resolve the dispute with the FA before commencing the action in court.

Respondents were supportive of this proposal. One respondent suggested that it be made mandatory that an investor has to exhaust his remedy at an approved Dispute Resolution Scheme before commencing legal action.

MAS' Response

MAS notes the comments that including more civil liability provisions in the FAA could result in increased risk of civil liability to FAs. We need to balance this against the interest of providing investors with avenues of recourse through civil liability provisions in the FAA. MAS will proceed with the proposal to extend the applicability of civil liability to more provisions in Part III of the FAA.

We will therefore retain the existing civil liability provision in relation to the obligation on FAs to have a reasonable basis for making the recommendation, while extending civil liability to the provision that places an obligation on FAs to furnish product information to investors. We also intend to proceed with the proposal to extend civil liability to FAA provisions relating to false or misleading statements. This would be similar to the civil liability provisions for false or misleading statements in the SFA.

We are of the view that there is no need to enact a specific provision to allow investors to claim for the value of the investment in exchange for surrendering the investment product. This is because Singapore courts have the power to make such orders.

We will proceed with the proposal to introduce a provision in the FAA to enable a court, in making an order in an action filed under a civil liability provision, to have regard to whether the investor had made a reasonable effort to resolve the dispute with the FA before commencing the action. We do not intend to make it mandatory that investors have to make their claims at an approved Dispute Resolution Scheme before commencing legal action. This is because it is preferable for the court to retain flexibility in assessing for any particular case whether the investor had acted reasonably in how he tried to resolve the matter with his FA prior commencing legal action. The similar provision in the CPFTA is not mandatory.

MAS will consult on the legislative drafting for these provisions prior to implementation.

"Coat-Tail" Actions

In conjunction with the proposed introduction of a civil penalty regime in the FAA, MAS proposed to introduce a "coat-tail" provision in Part III of the FAA, similar to that under the SFA. This would enable investors to ride upon a criminal conviction or a civil penalty award to file claims for damages.

Most respondents agreed that investors who suffered losses should have effective recourse to compensation. However, many respondents argued that a "coat-tail" provision is not necessary or not appropriate for the FAA. One issue raised by many respondents is the different nature of offences under the SFA and the FAA. For example, an investor who has suffered losses due to an insider trading offence under the SFA would often not know who he had traded with and would not be able to take civil action for damages. For FAA offences, investors can identify the party they can have recourse against and have several civil causes of action in tort and contract available to them.

Several respondents commented that offences under the FAA are dependent on the specific facts and circumstances of each individual case. Each claim should proceed on its own facts. A few respondents were concerned that allowing for coat-tail actions under the FAA could lead to the lodging of many frivolous claims. There should therefore be a mechanism to ensure that only an investor with a case that has facts that are substantially the same as those that led to the conviction or civil penalty award can commence a coat-tail action. A few respondents suggested that MAS instead consider enhancing the present framework to better look after investors' interests, such as the approved Dispute Resolution Scheme under the MAS Act. They also suggested that MAS continue to promote investor education, and responsible and transparent sales and marketing practices by FAs.

One respondent also suggested that a tribunal be set up to enable MAS to take formal regulatory action against FAs who are found by the tribunal to have breached FAA requirements. Powers to take regulatory action could be accompanied by the power to issue enforcement orders, such as remedial action and compensation orders. The tribunal would comprise persons of relevant knowledge and experience, similar to specialised tribunals within other professions and regulated industries that deal with misconduct of their members. Similar to the UK Financial Services and Markets Tribunal under the Financial Services Markets Act ("FSMA"), this tribunal could also provide a forum for an independent review of certain decisions made by the regulator.

MAS' Response

Under the proposal, although investors would be able to rely upon a conviction or civil penalty award to put in a claim for damages, each investor would still need to prove causation in order to link the contravention which resulted in the conviction or civil penalty award to the

loss the investor claims he suffered. Claims for damages relying on the "coat-tail" provision would therefore need to prove causation on a case-by-case basis. This would be different from how the SFA coat-tail provision operates for market misconduct cases, where the causation issues are generally more straightforward. This means coat-tail action hearings under the FAA would not be as efficient as those under the SFA We therefore accept that the majority of investors may be unlikely to take advantage of this right to recourse, as it would usually involve seeking legal advice and representation, with its associated costs. MAS has carefully considered and weighed the various issues raised, and on balance, we will not proceed with the proposal to introduce a "coat-tail" provision in the FAA. MAS will consider other measures that may be more effective in empowering investors to obtain remedies. This could include enhancing the complaints handing process obligations which are imposed on FAs. MAS will conduct a separate public consultation exercise on these issues.

On the suggestions that MAS consider enhancing the approved Dispute Resolution Scheme under the MAS Act, MAS is open to suggestions on how to improve dispute resolution mechanisms within the financial industry. We will consider whether the current framework for dispute resolution between investors and financial institutions can be further enhanced, for example by increasing the claim limits.

MAS has various powers to take regulatory action against FAs that breach their regulatory obligations. We may issue directions, reprimands and prohibition orders. Financial institutions are given an opportunity to be heard before MAS decides whether regulatory action should be taken. We are of the view that there is no necessity to set up a specialised tribunal to enable MAS to take formal regulatory action against FAs who have breached the FAA. We welcome industry associations establishing professional conduct committees that can take disciplinary action against their members, such as suspending or expelling members for non-compliance with the association's code of conduct.

There is currently a framework in place for appeals against certain administrative decisions made by MAS. The Financial Advisory (Appeals) Regulations promulgated under the FAA provide for an appeals process[3]. Appeals are heard by the Appeals Advisory Committee ("AAC"), which is a committee independent of MAS. The AAC considers submissions made by the appellant and MAS before it makes its recommendations to the Minister in-charge-of MAS on the merits of the appeal. We are of the view that this framework currently provides a sufficiently independent forum for the review of MAS' administrative decisions.

[3] The appeals process for the FAA is similar to the appeals processes for the SFA, the Business Trusts Act, the Trust Companies Act, and the Insurance Act.

Enhancing Remedies under the SFA for False or Misleading Statements in Marketing and Advertising Materials

After reviewing and considering feedback received on remedies for investors, MAS proposes to enhance the remedies under the SFA for false or misleading statements made in marketing and advertising materials. MAS proposes to amend Part XII of the SFA to make it explicit that it is an offence for any person making false or misleading statements in marketing and advertising materials for investment products. The existing civil penalty framework in the SFA will apply to this offence.

Where a person has been convicted or has had a civil penalty award made against him for this offence, MAS proposes to enable affected investors to rely on civil liability and "coat-tail" provisions in the SFA to claim for damages. We propose that the relevant sections in the SFA relating to civil liability and "coat-tail" actions be amended to explicitly cater for this. MAS will consult on the legislative drafting for these provisions prior to implementation.

Power to Apply to Court for Injunctions in the FAA

MAS proposed to introduce more comprehensive powers to enable MAS to apply to court for certain orders and injunctions under the FAA, similar to the provisions currently in the SFA. The UK Financial Services Authority ("FSA") and the US Securities and Exchange Commission ("SEC") have similar powers.

The majority of respondents were supportive of this proposal. One respondent sought details as to the nature of injunctions that may be sought under the proposed provisions.

MAS' Response

MAS will proceed with the proposal to amend the FAA to include these more comprehensive powers to enable MAS to apply to court for certain orders and injunctions under the FAA.

The provisions are intended to be similar to the provisions in the SFA that allow MAS to apply to the court to prohibit payments or transfer of monies, and for injunctions to restrain persons from engaging in conduct that constitute or would constitute a contravention of the SFA. MAS will consult on the legislative drafting for these provisions prior to implementation.

Wider Scope of Provision on False or Misleading Statements in the FAA

Under the FAA, FAs are prohibited from making false or misleading statements. However, this prohibition only applies to statements in relation to amounts payable in respect of the contract, or the effect of a provision of

the contract. MAS proposed widening the scope of the FAA to make it clear it would be an offence for FAs to make false or misleading statements in relation to a wider range of issues. This would reinforce to FAs that special care should be taken when communicating and dealing with their customers.

Most respondents were supportive of the proposal. A few respondents expressed the view that the provisions dealing with false and misleading statements under sections 199 and 200 of the SFA would be wide enough to cover situations where FAs make false or misleading statements to induce customers to buy investment products. One respondent expressed reservations regarding imposing criminal liability on a FA for making a statement that the FA "ought to have reasonably known" was false or misleading as it appears to be too onerous.

MAS' Response

Although the SFA provisions regarding false and misleading statements appear to be fairly wide, we are of the view that they may not cover the possible situations that may arise. For instance, section 199 of the SFA relates only to securities. It would not apply to the other investment products that FAs could advise their customers on.

In the interests of certainty and clarity, we are of the view that our proposal to enact provisions in the FAA to deal with false or misleading statements for a wider scope of issues would be appropriate.

We disagree that including the *mens rea* standard of "*ought to have reasonably known*" as one of the elements of the proposed wider provision for false or misleading statements in the FAA is too onerous. FAs, being in a position of assessing and making recommendations to their customers as to whether certain investment products are suitable for their customers' needs, should take especial care in their dealings with their customers, especially in the information being communicated to them. Making it an offence to make a statement that the FA ought to have reasonably known to be a false or misleading statement would ensure that FAs are mindful of these obligations during the sales process. MAS will consult on the legislative drafting for these provisions prior to implementation.

MONETARY AUTHORITY OF SINGAPORE
28 January 2010

ANNEX 1

LIST OF RESPONDENTS TO POLICY CONSULTATION ON REVIEW OF THE REGULATORY REGIME

- Aberdeen Asset Management Asia Limited
- AL Wealth Partners Ptd Ltd
- Alex
- Andrew Kwek
- Association of Financial Advisers (Singapore)
- Aviva Ltd
- Baker & McKenzie.Wong & Leow
- Barrie and Hibbert Asia Limited
- Bernard Lee
- BNP Paribas
- Calvin Phang
- Carolina Ng
- Central Provident Fund Board
- CFA Institute and CFA Singapore
- Chris Cuba
- City Index Asia Ptd Ltd
- Clifford Chance Wong Pte Ltd
- Consumers Association of Singapore (CASE)
- Daiwa Securities SMBC Singapore Limited
- Daniel Ong
- DBS Asset Management Ltd
- Eileen Lee
- Epyon Feng
- Fatmawati Iskandar
- FIL Investment Management (Singapore) Limited
- Financial Planning Association of Singapore
- Financial Services Consumer Association (FISCA)
- Five Pillars Pte Ltd
- Fortis Bank S.A/N.V.
- Friends Provident International Ltd (Singapore Branch)
- Hauw Soo Hoon
- HSBC Institutional Trust Services (Singapore) Ltd
- ICICI Bank Ltd
- iFast Financial Pte Ltd – Fundsupermart.com
- International Swaps and Derivatives Association, Inc. (ISDA);
- Investment Management Association of Singapore (IMAS)
- IPAC Financial Planning Singapore Pte Ltd
- Janice Lee
- Jeffery Soh
- Jeffrey Ong
- John Aw
- Joseph Lim
- Kevin Pang
- Khoo MK

- Koh U Kng
- Law Song Keng
- Life Insurance Association (Singapore)
- Lion Global Investors Limited
- Luis Lu
- Mercer (Singapore) Ptd Ltd
- Michael Teo
- Ministry of Community, Youth and Sports; Reaching Everyone for Active Citizenry@Home (REACH) Discussion Forum and Facebook Participants
- National Australia Bank Ltd
- Navigator Investment Services Ltd
- Ng Fook Cheong
- Nicholas Ang
- Ong Tean Heik
- Phillip Capital Management (S) Ltd
- Raymond Ng
- RBS Coutts Bank Ltd
- RHB Bank Berhad
- S L Tan & Co Advocates & Solicitors
- S. Dhana
- Securities Association of Singapore (SAS)
- Securities Industry and Financial Markets Association (SIFMA)
- Shook Lin & Bok LLP
- Singapore Foreign Exchange Market Committee
- Singapore Investment Banking Association (SIBA)
- Singapore Polytechnic School of Business
- Societe Generale (Singapore Branch)
- Templeton Asset Management Ltd
- The Association of Banks in Singapore (ABS)
- The Hong Kong and Shanghai Banking Corporation Ltd
- Thomas Cheong
- Tng Yong Chuan
- Toh Thian Ser
- United Overseas Bank Ltd
- VS Lingam
- Wildred Ling
- Winston Lee
- Wong Meng Keet

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