

# CONSULTATION PAPER

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## Consultation Paper on Proposed Amendments to the Securities and Futures Act and the Financial Advisers Act

MAS

Monetary Authority of Singapore

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## PREFACE

MAS has been reviewing the Securities and Futures Act, Cap. 289 (“SFA”) and the Financial Advisers Act, Cap. 110 (“FAA”) with a view to promote more effective disclosure by improving the quality of information available to investors, strengthening fair dealing in the sale and advisory process for listed and unlisted investment products and enhancing MAS’ powers under the respective Acts.

2 On 12 March 2009, MAS issued a policy consultation paper seeking comments on the review of the regulatory regime governing the sale and marketing of unlisted investment products (“March 2009 Consultation Paper”). On 28 January 2010, a further consultation paper was published (“January 2010 Consultation Paper”) to extend the scope of review to both unlisted and listed investment products sold to retail investors. MAS’ responses to the feedback received during the two policy consultations are published on our website.

3 MAS is now consulting on the draft legislation to amend the SFA and FAA to effect the policy positions set out in the two consultation papers and MAS’ response to feedback from the industry. The draft legislation also incorporates proposed amendments to enhance and refine our supervisory framework. The relevant legislative drafts are:

- (i) the *Draft Securities and Futures (Amendment) Bill 2012*; and
- (ii) the *Draft Financial Advisers (Amendment) Bill 2012*.

4 Separately, MAS will be consulting on proposed amendments to the SFA and FAA arising from policy consultation papers published on 13 February 2012 in relation to the proposed regulation of over-the-counter (“OTC”) derivatives and the transfer of regulatory oversight of commodity derivatives from International Enterprise Singapore to MAS. Legislative consultation papers on these proposed amendments will be published on our website shortly.

5 MAS invites interested parties to provide their comments and feedback on the draft Amendment Bills to:

Market Conduct Policy Division  
Capital Markets Department  
Monetary Authority of Singapore  
10 Shenton Way  
MAS Building

Singapore 079117

Email: [SFA\\_FAA\\_LegisConsult@mas.gov.sg](mailto:SFA_FAA_LegisConsult@mas.gov.sg)

Fax: (65) 6225-1350

MAS requests that all comments and feedback be submitted by 22 June 2012.

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

## INTRODUCTION

In the March 2009 Consultation Paper, MAS proposed an enhanced regime for unlisted investment products commonly sold to retail investors through the implementation of various proposals aimed at:

- (i) promoting more effective disclosure by improving the quality of information given to investors;
- (ii) strengthening fair dealing in the sale and advisory process; and
- (iii) enhancing MAS' powers for breaches of the Financial Advisers Act.

2 Following review of the feedback received on the March 2009 Consultation Paper, MAS issued a revised package of proposals aimed at further enhancing the safeguards for retail customers in January 2010. The revised proposals applied to both listed and unlisted investment products. The main proposals set out in the January 2010 Consultation Paper related to:

- (i) the classification of a list of products as Excluded Investment Products for which the existing regime at that point would continue to apply, and for the sale of products other than these products to be subject to the revised package of proposals;
- (ii) establishing a Customer Knowledge Assessment Framework and a Customer Account Review Framework for certain unlisted and listed investment products respectively;
- (iii) expanding the scope of the Capital Markets and Financial Advisory Services ("CMFAS") modules which new and existing representatives would be required to pass in order to be able to sell certain investment products; and
- (iv) extending the scope of the requirement for issuers to issue a Product Highlights Sheet.

3 MAS has implemented the majority of the proposals set out in the Consultation Papers through amendments to subsidiary legislation, directions and guidelines. Financial institutions have been encouraged to adopt the proposals even before legislative implementation as good practice in conducting business with their customers.

4 To effect policy proposals set out in the Consultation Papers and corresponding responses issued by MAS, as well as to further enhance and refine our supervisory framework, MAS is presenting the draft *Securities and Futures (Amendment)*

*Bill 2012* (“SF(A) Bill 2012) and the draft *Financial Advisers (Amendment) Act 2012* (“FA(A) Bill 2012”) for feedback from the public.

## **PART I: SECURITIES AND FUTURES (AMENDMENT) BILL 2012**

5 The draft SF(A) Bill 2012 is set out in **Annex 1**. A comparative table that tracks the amendments is set out in **Annex 1A**.

6 The key amendments proposed to give effect to policy proposals contained in the March 2009 and January 2010 Consultation Papers are in relation to the following:

- (i) the requirement for issuers to classify products as MAS may prescribe, and disclose such classification to relevant persons;
- (ii) the enhancement of MAS’ investigatory and regulatory powers;
- (iii) the enhancement of civil remedies available to investors in cases of market misconduct;
- (iv) the requirement for marketing and advertising materials to give a fair and balanced view of the products;
- (v) the requirement for a Product Highlights Sheet to be issued in a prescribed format;
- (vi) the appointment of approved trustees for unlisted debentures;
- (vii) the provision of timely and meaningful ongoing disclosure by issuers of unlisted debentures; and
- (viii) the provision of a cooling-off period for investors in unlisted debentures.

7 In addition to the above, MAS is proposing amendments to the SFA to enhance and provide clarity to our supervisory framework. These are set out in paragraphs 8 to 10.

8 On the provisions relating to false trading and market rigging, MAS is proposing to clarify what is the required state of mind or *mens rea* for liability. It is proposed that a person who does any act that creates or is likely to create a false or misleading appearance will be liable if his purpose or any one of his purposes for which he does the act is to create a false or misleading appearance, or if he knows that or does not care whether, the act will or will be likely to result in the false or misleading appearance. MAS is also considering the possibility of imposing civil liability, but not criminal liability, if the person ought reasonably to have known that the act will, or will be likely to, result in the false or misleading appearance. These amendments have been

proposed following the Court of Appeal's suggestion in *Tan Chong Koay & anor v Monetary Authority of Singapore* [2011] SGCA 36 for MAS to clarify whether and what kind of *mens rea* is required to establish liability under false trading provisions in section 197 of the SFA, and possibly to distinguish between the *mens rea* requirements of the various limbs of section 197 of the SFA according to whether the acts are prosecuted as criminal offences or pursued as civil penalty claims.

9 MAS is also proposing to amend the SFA to better safeguard retail investors' interests and moneys. Currently, capital markets services licensees are permitted to withdraw customer moneys maintained in segregated trust accounts, as may be agreed to by the customer. Such arrangements may not necessarily be in the best interest of retail investors, as they will lose the trust protection accorded under the SFA should the licensee default. Retail investors may also be unable to fully appreciate the implications and risks involved when consenting to such arrangements. MAS is thus proposing to amend the SFA to state that customers may agree to alternative arrangements in relation to the use of their money or assets received by a capital markets services licensee, except in certain circumstances as may be prescribed by MAS.

10 Technical amendments will also be made to the SFA where appropriate.

## **PART II: FINANCIAL ADVISERS (AMENDMENT) BILL 2012**

11 The draft FA(A) Bill 2012 is set out in **Annex 2**, with its corresponding comparative table set out in **Annex 2A**.

12 To effect policy positions contained in the March 2009 and January 2010 Consultation Papers, the key amendments proposed are in relation to the following:

- (i) the widening of grounds on which licenses may be revoked and prohibition orders be imposed;
- (ii) the provision for civil liability to apply to financial advisers' obligation to furnish product information to investors and not to make false or misleading statements; and
- (iii) the enhancing of MAS' investigatory and regulatory powers.

13 Technical amendments will also be made to the FAA where appropriate.

## INVITATION FOR COMMENTS

- 14 MAS invites comments on the following:
- (i) Proposed amendments to the *Securities and Futures Act (Cap 289)* attached at **Annexes 1** and **1A**; and
  - (ii) Proposed amendments to the *Financial Advisers Act (Cap 110)* attached at **Annexes 2** and **2A**.
- 15 Amendments to subsidiary legislation will have to be made to support the proposed changes to the SFA and the FAA. MAS will consult on the amendments to subsidiary legislation at a later date.





Monetary Authority of Singapore