

RESPONSE TO FEEDBACK RECEIVED

June 2018

RESPONSE TO FEEDBACK RECEIVED – CONSULTATION PAPER ON DRAFT REGULATIONS PURSUANT TO THE SFA AND FAA

MAS

Monetary Authority of Singapore

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Defined Terms

CIS	Collective investment scheme(s) as defined under section 2(1) of the SFA
ETF	An exchange-traded fund
FAA	Financial Advisers Act
FAR	Financial Advisers Regulations
PHS	Product Highlights Sheet
PHS Guidelines	MAS' Guidelines on the Product Highlights Sheet [Guideline No. SFA 13-10]
PHS Illustrations	The illustrations of PHS set out in the Schedules to the SFR(SD) and SF(CIS)
SFA	Securities and Futures Act
SF(A)A	Securities and Futures (Amendments) Act 2012
SF(LCB)Regs	Securities and Futures (Licensing and Conduct of Business) Regulations
SF(OIS)Regs	SF(OIS)(SD)Regs, SF(OIS)(BT)Regs and SF(OIS)(CIS)Regs
SF(OIS)(CIS)Regs	Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005
SF(OIS)(SD)Regs	Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005
SF(OIS)(BT)Regs	Securities and Futures (Offers of Investments) (Business Trusts) (No 2) (Amendment) Regulations 2017

1 Preface

1.1 On 17 September 2013, MAS issued a consultation paper inviting comments on proposed amendments to Regulations issued pursuant to the Securities and Futures Act (Cap. 289) [“SFA”] and Financial Advisers Act (Cap. 110) [“FAA”] (“**Sep 2013 Consultation Paper**”)¹.

1.2 The consultation period closed on 17 October 2013, and MAS would like to thank all respondents for their contributions. The list of respondents is in Appendix A.

1.3 MAS has considered carefully the feedback received, and where it agrees with the comments, has incorporated them into the Regulations. The Amendment Regulations have been gazetted on 8 June 2018, and can be accessed at the following links:

- [Securities and Futures \(Offers of Investments\) \(Shares and Debentures\) \(Amendment\) Regulations 2018](#)
- [Securities and Futures \(Offers of Investments\) \(Business Trusts\) \(No. 2\) \(Amendment\) Regulations 2018](#)
- [Securities and Futures \(Offers of Investments\) \(Collective Investment Schemes\) \(Amendment\) Regulations 2018](#)
- [Securities and Futures \(Licensing and Conduct of Business\) \(Amendment\) Regulations 2018](#)
- [Financial Advisers \(Amendment\) Regulations 2018](#)
- [Financial Advisers \(Amendment No. 2\) Regulations 2018](#)

(collectively, the “**Amendment Regulations**”)

1.4 Comments that are of wider interest, together with MAS’ responses are set out below.

¹ The consultation paper can be accessed via this link [<http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2013/Draft-Regulations-pursuant-to-the-Securities-and-Futures-Act-and-the-Financial-Advisers-Act.aspx>]

2 Product Highlights Sheet (“PHS”)

2.1 The SFA was amended in 2012 to require a PHS to accompany offers of asset-backed securities, structured notes, unlisted CIS and ETFs that have to be made with a prospectus. MAS had consulted on the form and content of the PHS, which respondents were generally agreeable with, as they largely mirror those in the PHS Guidelines. MAS has accordingly amended the SF(OIS)(SD)Regs and the SF(OIS)(CIS)Regs to reflect these requirements. These requirements will apply to PHS accompanying prospectuses or profile statements lodged with MAS on or after 10 December 2018.

2.2 Form of the PHS

2.3.1 A few respondents sought clarity on whether the tabular structure and colour scheme of the PHS Illustrations must be strictly applied.

MAS’ Response

2.3.2 Issuers must use the tabular structure (including the prescribed headings and sub-headings) and the yellow Pantone 109C strip on the right edge of the document. These basic features allow the PHS to be easily distinguished from other documents. MAS has amended the SF(OIS)(SD)Regs and the SF(OIS)(CIS)Regs to clarify that these requirements are mandatory.

2.3.3 Issuers are encouraged to follow the other (optional) colours cited in the PHS for readability. Issuers may also add sub-headings and modify the contents of the PHS to cater to a specific product.

2.3 Content of the PHS

(i) Interpretation of materiality

2.4.1 One respondent sought clarity on how the “material” test should be applied, with respect to the requirement that the PHS must not contain “material” information that differs in any “material” particular from that set out in the prospectus.

MAS’ Response

2.4.2 MAS is of the view that issuers and their advisers are best placed to determine the materiality of information in the PHS, and should exercise care and professional judgement when doing so. Importantly, a PHS must not contain material information that differs substantively from the information set out in the prospectus.

(ii) *Fair and balanced view of the securities*

2.4.3 In relation to the proposal for the PHS to provide a fair and balanced view of securities offered, one respondent commented that the existing PHS Guidelines' disclosure requirements, particularly the requirement to highlight the key risks of an investment, already sufficed to provide such a fair and balanced view.

MAS' Response

2.4.4 Full disclosure is not the same as fair and balanced disclosure. It is possible for a PHS to contain all the required information, yet presented in a manner that is not fair and balanced. For example, for a product that is structured to give specific payoffs based on different scenarios, the PHS would not be considered fair and balanced if the scenarios with higher payoffs are presented more prominently than those with lower payoffs although there may be equal or higher probability of lower payoffs. A separate fair and balanced test is therefore necessary to complement the existing disclosure requirements.

(iii) *Content of PHS*

2.4.5 Some respondents suggested adding or removing certain content from the PHS formats. There was one suggestion to add board lot sizes of ETFs and expense ratios, and another to make page number references to the prospectus optional. One respondent questioned the necessity of (1) a warning statement that an investor may lose all of his initial principal investment when there is already a statement that "*These risk factors may cause you to lose some or all of your investment*"; and (2) a diagram depicting the full fund structure. Another respondent suggested having the option for the "*Product Type*" classification to be "*CIS*" and not just "*unit trusts*" as not all CIS are unit trusts.

MAS' Response

2.4.6 MAS has considered all the suggestions on the PHS content, and our final position as set out below seeks to strike a balance between ensuring that key information is sufficiently highlighted, and keeping the PHS concise and reader-friendly.

2.4.7 *Board lot sizes* – Board lot sizes currently vary across ETFs, and may be in sizes of 5, 10 or 100. As board lot size affects the minimum cost of entry and exit of an investment, MAS agrees that board lot size of ETFs is material information that should be disclosed in the PHS.

2.4.8 *Expense ratios* – CIS with multiple share classes should disclose the specific expense ratio for each share class. A range of expense ratios for all share classes may be

disclosed where the number of share classes is so large that disclosing each share class' expense ratio would make it impracticable to keep the PHS to a reasonable length.

2.4.9 *References to the prospectus* – The proposal to require prospectus page numbers be cross-referenced in the PHS was intended to help investors refer to relevant sections of the prospectus more easily. As an alternative, MAS will also allow cross-references to the headings of specific paragraphs or sections in the prospectus.

2.4.10 *Warning statement* – MAS is of the view that the warning statement that an investor may lose all of his initial principal investment is a critical risk factor that warrants added emphasis.

2.4.11 *Diagram of fund structure* – A diagram depicting the structure of a CIS may not always be present in the prospectus. Therefore, instead of requiring the “*Investment Strategy*” section of the PHS to refer to “*the full diagrams of the structure of the Fund*”, MAS will require issuers to cite the relevant section(s) in the prospectus on investment strategy.

2.4.12 *Classification of Product Type* – MAS recognises that not all CIS are unit trusts. However the suggestion to allow the product to be classified as “*CIS*” would not shed any light on the structure of the CIS. Instead, the specific legal structure of the CIS should be set out under “*Product Type*” (e.g., unit trust, open-ended investment company, “*Société d’ Investissement à Capital Variable*”, etc.).

2.4.13 MAS has amended the SF(OIS)(SD)Regs and the SF(OIS)(CIS)Regs to reflect the abovementioned changes.

(iv) Providing greater clarity on content requirements

2.4.14 Some respondents sought clarity on the content requirements of the PHS for a CIS. Their questions pertained to (1) whether only retail classes of a CIS need to be disclosed, (2) the type of swaps for which disclosures on “parties involved” would need to be made, and (3) the extent that potential increases in fees and charges need to be disclosed.

MAS’ Response

2.4.15 *Share classes* – The disclosure requirements relating to classes of a CIS apply only to those classes that may be offered to retail investors.

2.4.16 *Swap counterparties for “Parties Involved”* – The disclosure regarding “Parties Involved” will apply only where the swaps are the main investments of the scheme, i.e., in a synthetically replicated CIS.

2.4.17 *Increase in fees and charges* – MAS expects all fees or charges payable by the underlying fund to be disclosed in the PHS, including where a master-feeder fund structure is used. Where there are multiple underlying funds, the fees and charges may be disclosed as a range due to the PHS’ space constraints. The requirement to state that “fees may later increase or new fees introduced” will apply only when the issuer already knows that there is likely to be a fee increase or a new fee introduced.

2.4 Responsibility for preparing the PHS

2.4.18 One respondent sought clarity on the parties responsible for the preparation of the PHS, and for ensuring compliance with the requirements on the PHS.

MAS’ Response

2.5.1 The person making the offer (i.e. the issuer) is obliged to ensure that the PHS complies with the prescribed regulatory requirements. Where an issuer has engaged professional advisers (e.g. issue manager) to help prepare the PHS, the issuer would still ultimately be liable under section 240AA(4) or section 296A(4) of the SFA for any non-compliance. This treatment is no different from that for prospectus.

2.5 Application of the PHS Guidelines

2.6.1 One respondent sought clarity on whether the parts of the PHS Guidelines that are not incorporated in the SFR(OIS)(SD)Regs and the SFR(OIS)(CIS)Regs will continue to apply.

MAS’ Response

2.6.2 When the revised SFR(OIS)(SD)Regs and the SFR(OIS)(CIS)Regs comes into force, the PHS Guidelines will be cancelled. Instead, MAS will introduce a Practice Note to provide broad guiding principles on preparation of the PHS, e.g. issuers should use clear and simple language that investors can easily understand, and are encouraged to use diagrams, such as infographics, tables and numerical explanations (where applicable) to explain the structures and payoffs of the products.

3 Fair and balanced advertising and other advertising restrictions

3.1 MAS had proposed amendments to the SF(OIS)Regs, the SF(LCB)Regs, and the FAR to require advertisements on investment products² to provide a fair and balanced view of the investment product and comply with specific advertising restrictions [collectively, “**advertising restrictions**”]. The advertising restrictions will apply to advertisements that are published, circulated or distributed on or after 10 December 2018.

3.2 Overall

3.2.1 Respondents were generally supportive of MAS’ move to raise advertising standards on investment products. However, one respondent highlighted that there is inherent subjectivity involved in determining whether an advertisement is fair and balanced, clear and legible, and suggested for these requirements to be placed in non-legally binding Guidelines instead.

3.2.2 One respondent also noted that there were potential overlaps between the proposed “fair and balanced” advertising requirements and existing standards for advertisements not to be “false or misleading” in the SF(OIS)Regs. An example cited was the omission of material information that would cause the advertisement to be misleading, which would be better categorised under “false or misleading” advertising, instead of an advertisement which did not give a “fair and balanced” view of investment products.

MAS’ Response

3.2.3 MAS had proposed making it a statutory requirement for advertisements on investment products to be fair and balanced, clear and legible to enable MAS to take regulatory action where these requirements are breached. MAS will take a principles-based approach by setting out the high-level principles (i.e. fair and balanced, clear and legible) that advertisements should abide by in Regulations, with a non-exhaustive list of situations which would not meet these requirements. Industry associations are encouraged to develop their own set of Guidelines to provide greater clarity and practical examples to their members.

² The scope of the products covered under the respective Regulations differ. For convenience, the term “investment product” will be used in this response paper. Please refer to the respective Regulations for the scope of products covered under each Regulation.

3.2.4 MAS has considered the feedback and amended the SF(OIS)Regs, SF(LCB)Regs and FAR to more clearly distinguish between advertisements that would be considered “false or misleading” and those that would not be “fair and balanced”. To the extent that overlaps remain, MAS will take action for breach of the advertising restrictions which is most appropriate given the circumstances.

3.3 Scope of Advertising Restrictions

(i) Definition of “advertisement”

3.3.1 MAS had proposed to introduce a definition of “advertisement” to cover any dissemination and conveyance of information, regardless of the medium, in the SF(LCB)Regs and FAR. Respondents expressed concern that this definition would be wide-reaching, and potentially cover communications that are not traditionally considered as advertisements (e.g. product risk disclosures to a potential investor). Respondents also highlighted inconsistencies between the existing scope of advertising restrictions under the SF(OIS)Regs and the proposed scope of advertising restrictions under the SF(LCB)Regs and FAR.

MAS’ Response

3.3.2 MAS agrees with the feedback received and will limit the scope of “advertisements” to communications that promote or solicit investments in capital markets products under the SF(LCB) or investment products under the FAR. For consistency, communications that are not subject to advertising restrictions under the SF(OIS)Regs – either because they are not considered advertisements (e.g. free commentaries by persons not connected to an offer or intended offer) or are otherwise exempt from the advertising restrictions as they relate to offers or intended offers for which a prospectus is not required (e.g. information memorandums) – will be excluded from the scope of “advertisements” under the SF(LCB)Regs and FAR.

3.3.3 Further examples of the types of publications that are covered within the scope of “advertisements” under the SF(LCB)Regs and FAR can be found in **Annex B**.

(ii) Investors to whom the Regulations apply

3.3.4 Several respondents suggested that the advertising restrictions should be confined to advertisements targeted at retail investors only, and that such restrictions were not necessary for non-retail investors, i.e, accredited investors (“AIs”), institutional investors (“IIs”) and expert investors (“EIs”), who should be sophisticated and knowledgeable enough to safeguard their own interests.

MAS' Response

3.3.5 As a general rule, advertisements in respect of investment products should be fair and balanced, clear and legible to their target audience. The sophistication of the target investor base would be taken into consideration in assessing whether the advertisement meets these standards. For example, the presence of legal or technical jargon may make an advertisement targeted at retail investors unclear, but the same advertisement targeted at non-retail investors may be assessed to be sufficiently clear.

3.3.6 Nonetheless, MAS notes that the FAA currently provides certain exemptions for financial advisers³ ("FAs") when serving AIs, IIs and EIs. To the extent that communications to non-retail investors are already carved out from the definition of "advertisements", these would not have to comply with the advertising restrictions in any case.

(iii) Person issuing the advertisement

3.3.7 MAS had proposed for the advertising restrictions in the SF(LCB)Regs and FAR to apply to licensed entities⁴ who are preparing, publishing, circulating or distributing advertisements in respect of investment products. Two respondents suggested limiting liability of persons publishing, circulating or distributing advertisements which they did not prepare. Conversely, one respondent suggested limiting liability of persons issuing advertisements where the advertisement is subsequently modified by another party in the distribution chain.

MAS' Response

3.3.8 Where a licensed entity is merely publishing, circulating or distributing advertisements prepared by a product offeror who is also subject to the same advertising restrictions (by virtue of the SF(OIS)Regs), MAS agrees that there is no need for the duplication of liability to be imposed on both the product offeror and licensed entity for the same advertisements. In such situations, the product offeror shall be responsible for complying with the advertising restrictions, but any licensed entity who is publishing, distributing or circulating the advertisement should have processes in place to assure

³ (1) Regulation 27, 32A and 32C of the FAR read with section 23(4) of the FAA; (2) Regulation 27A, 28, 32B, 32D and 36 of the FAR; (3) Persons exempt under FA(Exemption from Requirement to Hold FA Licence) Regulations; (4) Persons exempt under FA(Exemption from Section 25 to 29 and 36) Regulations; (5) Persons exempt under FA(Structured Deposits – Prescribed Investment Product and Exemption) Regulations

⁴ For the SF(LCB), this refers to holders of a Capital Markets Service Licence (CMSLs) or Exempt CMSLs. For the FAR, this refers to Financial Advisers ("FAs") or Exempt FAs. For convenience, the term "licensed entity" will be used in this response paper to refer to such entities collectively.

itself that the preparer has complied with the relevant regulations. However, where the preparer is not subject to the advertising restrictions in the SF(OIS)Regs, the licensed entity shall be responsible for ensuring the advertisement complies with the relevant regulations before publishing, circulating or distributing it.

3.3.9 MAS will also not hold the original issuer of an advertisement liable for advertisements which have been subsequently modified by a third party for its own distribution purposes, unless the third party is indirectly advertising for the original issuer (see section 3.5 below).

3.4 Specific Restrictions

(i) Fair and balanced

3.4.1 MAS had consulted on the requirement for an advertisement to give a fair and balanced view of the nature, material benefits and risks of the investment products offered. Several respondents requested greater clarity on what “fair and balanced” entails in practice, particularly with respect to advertisements which reflect the “potential returns” on an investment product.

3.4.2 On the prohibition of advertisements comparing the nature of investment products to deposits, one respondent queried how funds can comply with this requirement if a fund’s investment objective is to provide a return comparable to a deposit. Another respondent queried whether illustrating the typical interest rate of a deposit versus the projected investment returns of an investment product would contravene this requirement.

MAS’ Response

3.4.3 The intent of requiring advertisements which contain potential returns to provide a balanced description of the associated investment risks is to ensure a fair portrayal of the upsides and downsides of the investment. The risks that should be described, and the level of detail needed, will depend on the strength of claims of potential returns made in the advertisement. Generally, the stronger the claims of potential returns, the more the advertisement should contain details of the risks of not realising the potential returns. It should also be noted that this restriction only applies where the advertisement makes mention of the potential returns of a product. Where there are other restrictions on the use of predicted or projected returns, such as in the case of CIS, this restriction would not be relevant since the advertisement would already be precluded from stating the potential returns.

3.4.4 MAS wishes to highlight that the restriction on comparing an investment product to that of a deposit is in respect of the *nature* of the product. This is because investment products, including structured deposits, are by their nature risky, and should not be presented to be as “safe” as deposits. On the other hand, stating factually that the expected returns of a product are comparable to the returns on a deposit would not contravene this restriction.

(ii) *Legible*

3.4.5 In the case of an advertisement appearing in any document, MAS proposed to require the text to be in a minimum font size of 10-point Times New Roman (“TNR”). MAS further proposed to require footnotes to be at least half the size of the main text to which it relates, subject to the overall minimum font size of 10-point TNR.

3.4.6 While in-principle supportive of having minimum font sizes, a number of respondents highlighted that advertisers should be given the flexibility to use a font-style that aligns with their group’s brand strategy. For practical reasons, several respondents also suggested including a maximum font size of 14-point TNR for footnotes. This would be consistent with existing legibility requirements for advertisements on investment-linked policies and collective investment schemes.⁵

3.4.7 One respondent suggested that television advertisements should be required to comply with legibility requirements since such advertisements may also contain text. On the other hand, several respondents requested for exemptions from minimum font size requirements for advertisements made through digital media, particularly mobile phones and computers. This is because font size would be determined by the display screen of the devices from which the advertisements are viewed, and advertisements can typically be enlarged by readers at their discretion. For outdoor media such as billboards and posters, two respondents commented that a minimum font size of 10-point TNR may not be sufficiently legible.

MAS’ Response

3.4.8 The minimum font size of 10-point TNR will apply to any document, electronic mail or website, excluding outdoor advertisements. Other font-styles that are visually equivalent to 10-point TNR will be acceptable. For footnotes, MAS agrees with suggestions that the font size need not be larger than 14-point TNR (or visually equivalent).

⁵ As set out in MAS Notice 307 Investment-Linked Policies, Appendix F and the SF(OIS)(CIS)Regs respectively.

3.4.9 For other types of advertisements, including outdoor advertisements, they will be subject to an overall “legibility” requirement. Any text appearing in footnotes must still be at least half the size of the main text to which it relates, with no minimum or maximum font sizes stipulated. In determining whether an advertisement is legible, MAS will have regard to the advertisement in its entirety, including the nature of the medium used to advertise.

(iii) Statement that advertisement not reviewed or endorsed by MAS

3.4.10 To ensure that investors are made aware that advertisements are not reviewed or endorsed by MAS, MAS proposed to require all advertisements to contain a statement to that effect. A number of respondents submitted that such a statement was not necessary as consumers were generally aware that advertisements were not vetted by MAS. One respondent suggested that it would be more effective for MAS to place the statement on its website instead. Another suggested that if MAS were to require such a statement to be included, the statement should be short for practical reasons.

MAS’ response

3.4.11 MAS is of the view that a clear statement in an advertisement that the advertisement has not been reviewed or endorsed by MAS would better ensure all viewers of the advertisement are notified of this fact. To give greater clarity and certainty on satisfying this requirement, MAS will require advertisements to include the following short statement: *“This advertisement has not been reviewed by the Monetary Authority of Singapore.”*

3.5 Indirect Advertising

3.5.1 MAS proposed for licensed entities to be accountable for advertisements they publish, circulate or distribute, whether directly or indirectly. One respondent requested for greater clarity on scenarios where an FI would be considered as indirectly advertising.

MAS’ response

3.5.2 The intent of extending the advertising restrictions to indirect advertisements by licensed entities is to address situations where a licensed entity has a tie-up with another non-licensed entity to promote or solicit investments in investment products for the licensed entity. The non-licensed entity would not be subject to the advertising restrictions under the SF(LCB) or FAR, and the licensed entity who ties-up with such non-licensed entities should thus be responsible for ensuring that the advertisements used by the latter complies with the relevant advertising restrictions.

3.5.3 An example of this is where a training provider provides training on investing in an investment product, and has an arrangement with a licensed entity to refer people who are interested in purchasing the product to the licensed entity. This is regardless of whether the training provider receives any fee or commissions from the licensed entity, since the benefits that the training provider derives from these tie-ups could be non-financial in nature.

3.6 Senior Management approval of advertisements

3.6.1 To instil accountability in senior management, MAS had proposed for senior management of licensed entities to approve advertisements prior to their publication, circulation or distribution. While respondents were in-principle supportive of the need for senior management accountability for a licensed entity's advertisements, a number of them highlighted that the sheer number of advertisements would make this requirement impractical to operationalise. Hence, many respondents suggested that senior management should be allowed to delegate approval of advertisements to other appropriate staff (e.g. Head of Compliance).

MAS' response

3.6.2 MAS agrees with the feedback received and has amended the relevant Regulations to allow delegation of the approval process for advertisements⁶. However, senior management would still be ultimately responsible for ensuring that the advertisements comply with the relevant advertising restrictions.

4 Removal of exemption for advising overseas investors

4.1 MAS had proposed removing Regulation 36 of the FAR, which currently exempts FAs from having to comply with most of the FAA conduct of business requirements when providing financial advisory services to overseas investors (the "overseas investor exemption").

4.2 General

4.2.1 Respondents were generally supportive of the removal of the overseas investor exemption. One respondent highlighted that it was already market practice for FAs to generally apply the same policies and procedures to their financial advisory activities, irrespective of their customers' citizenship/residency status or physical location.

⁶ This mirrors the delegation powers for Product Due Diligence requirements in FAR Reg 18B.

However, one respondent expressed concern over the increase in compliance costs from the removal of the overseas investor exemption due to the resulting application of business conduct requirements such as the Customer Knowledge Assessment (“CKA”)⁷ for FAs providing financial advisory services to overseas investors.

4.2.2 Given that transactions with overseas investors typically take place over the phone, one respondent also sought clarity on whether information required to be furnished under Paragraph 36 of the Notice on Recommendations on Investment Products [FAA-N16] can be furnished to overseas investors verbally, over recorded phone conversations, at the time of making the recommendation. Alternatively, they suggested that MAS could consider that the requirements be satisfied verbally at the time of the recommendation, followed by documents being furnished to the client within a reasonable time of the verbal recommendation.

4.2.3 Separately, some respondents sought clarity on whether the AI, II and Expert Investor definitions under the SFA and FAA applied to clients who are not Singaporean and/or who are physically located overseas.

MAS’ Response

4.2.4 MAS recognises that having to comply with all relevant business conduct requirements in the FAA when providing financial advisory services to overseas investors may lead to some increased costs for FIs. Nonetheless, MAS is of the view that the benefits of applying these conduct requirements to overseas investors outweigh the costs. We have also received feedback that it is already a market practice for FAs to adopt the same policies and procedures for the provision of financial advisory activities, regardless of their customers’ citizenship/residency status or physical location. Further, providing an equal level of regulatory protection to both overseas and resident investors may make FIs more attractive to prospective overseas investors.

4.2.5 Paragraph 36 of FAA-N16 can be fulfilled by an FI recording the conversation with clients and sending written documentation to the client thereafter. This guidance is also applicable to situations where a client located in Singapore is speaking to an FI over the telephone.

4.2.6 The AI, II and EI definitions under the SFA and FAA apply to investors whom the FIs are dealing with, irrespective of the investors’ physical location or citizenship status.

⁷ As required under the Notice on Recommendations on Investment Products [FAA-N16].

4.3 Application to existing relationships with overseas investors

4.3.1 Two respondents suggested that the overseas investor exemption should be retained for existing relationships with overseas investors (i.e. that FAA exemptions continue to apply in respect of such clients). They also highlighted that the removal of the overseas investor exemption should not have retrospective effect on transactions entered into / services provided to overseas investors prior to the date in which the exemption would be removed.

MAS' Response

4.3.2 The removal of the overseas investor exemption will not have retrospective effect. However, existing relationships that FAs have with overseas investors will not be “grandfathered”. FAs will have to comply with the relevant business conduct requirements when providing financial advisory services to overseas investors from the date on which the existing exemption is removed, regardless of whether the overseas investor was an existing client of the FA. To allow the industry sufficient lead time to put in place the necessary policies and procedures to comply with the relevant business conduct requirements in the FAA when providing financial advisory services to overseas investors, the removal of the existing exemption will take effect on 10 December 2018, 6 months after the Financial Advisers (Amendment No. 2) Regulations 2018 comes into operation.

MONETARY AUTHORITY OF SINGAPORE

8 June 2018

Annex A

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON
DRAFT REGULATIONS PURSUANT TO THE SECURITIES AND FUTURES ACT
AND THE FINANCIAL ADVISERS ACT**

1. Allianz Global Investors Singapore Limited
2. BNP Paribas
3. Chan and Goh LLP
4. *Joint submission by:* Citibank, N.A., Singapore Branch, Citicorp Investment Bank (Singapore) Limited, Citigroup Global Markets Singapore Pte Ltd and Citigroup Global Markets Singapore Securities Pte Ltd
5. Citibank Singapore Limited
6. Clifford Chance
7. Daiwa Capital Markets Singapore Limited
8. DBS Bank Ltd
9. ICICI Bank Limited, Singapore Branch
10. iFAST Financial Pte Ltd
11. IG Asia Pte Ltd
12. Investment Management Association of Singapore
13. KPMG Services Pte Ltd
14. Life Insurance Association, Singapore
15. Maybank Singapore
16. Professional Investment Advisory Services
17. RHTLaw Taylor Wessing LLP
18. Securities Association of Singapore
19. State Street Corporation
20. Sumitomo Mitsui Banking Corporation
21. UOB Bank Ltd

22. Zurich Life Insurance (Singapore) Pte Ltd

Individuals

23. Mohan Gopalan

24. Lim Keah Meng

25. Rose A.G. Yeo

4 other respondents requested confidentiality.

Confidentiality requested

26. Amundi Singapore Limited

27. OCBC Bank

28. Bank of Singapore

29. Allen & Gledhill

Annex B

SCOPE OF “ADVERTISEMENTS” COVERED UNDER THE SF(LCB) AND FAR

	Type of publication	Explanation
1	Mandated disclosure documents such as Prospectuses and Product Highlights Sheets.	No. Prospectuses and Product Highlights Sheets are not regarded as “advertisements” under SF(OIS)Regs, the SF(LCB) or the FAR as they are disclosure documents required under law.
2	Communications permitted for offers made in reliance of prospectus exemptions (e.g. Information Memorandums, including Termsheets ⁸ or Indicative Termsheets and Pre-deal research publications).	No. As the offer or intended offer is exempted from prospectus requirements, the permitted communications are not covered under the SF(OIS) Regs, the SF(LCB) or the FAR.
3	Non-mandated risk disclosure documents which serve to highlight risks of a product to a prospective customer.	No. These do not promote or solicit investments in products.
4	Essential communications between FI and existing customers.	
5	Market commentaries or sponsored contents on historical performance of the financial markets or financial instrument, such as a company’s security.	Depends. Free commentaries by persons not connected to an offer or proposed offer are currently not covered under SF(OIS)Regs, and would similarly not be covered under SF(LCB) and FAR. Sponsored content, on the other hand, is likely to be considered an advertisement to the extent it is issued in connection with the promotion, solicitation of investments in capital markets products or investment products.

⁸ Termsheets are provided to clients post-marketing. At the stage when these are provided to clients, the clients would have already indicated interests in the particular products and the termsheets are used to provide indicative prices and terms of the proposed transaction to clients.

6	Materials used for seminars, talks and presentations (e.g. Powerpoint slides).	<u>Depends.</u> Where the materials are used in connection with promoting or soliciting investments in investment products, these would fall within the scope of “advertisements”.
7	Periodic newsletters to existing customers with summary of FI’s recommendation on specific investment products.	<u>Yes.</u> These would be considered advertisements as they promote or solicit investments in investment product(s).
8	Brand advertisements.	<u>Depends.</u> Covered insofar as such advertisements promote or solicit investments in a product or service provided by the FI.
9	Generic marketing materials, such as those describing online execution platforms offered by FIs, or flyers/invitations to corporate events, or advertisements on a range of capital markets products offered by FI.	To the extent that the advertisements are promoting the FI brand, as opposed to investment products, the applicable requirements would be Reg 46AD and Reg 22D of the SF(LCB) and FAR respectively, instead of Reg 46AA and Reg 22A.

