

CONSULTATION PAPER

P015 - 2015

September 2015

Proposed Amendments to the Securities and Futures Act, Financial Advisers Act and Trust Companies Act

MAS

Monetary Authority of Singapore

Contents

1	Preface	3
2	Introduction	5
3	Enhancements to Supervisory Powers	6
4	Strengthening of Business Conduct Requirements	11
5	Pledging Securities held in CDP Direct Accounts for Collateralised Trading	13

1 Preface

1.1 MAS conducted a review of the Securities and Futures Act (Cap. 289) (“SFA”), the Financial Advisers Act (Cap. 110) (“FAA”), the Trust Companies Act (Cap. 336) (“TCA”) and their subsidiary legislation (collectively referred to as “Relevant Laws”), to identify areas where MAS’ supervisory powers should be further enhanced, as well as to strengthen business conduct requirements applicable to entities regulated under these Acts. In line with the ongoing review of the Banking Act (“BA”), the proposed enhancements will also harmonise similar requirements across the various Acts where appropriate.

1.2 In addition, MAS is proposing to provide an option for investors to more conveniently pledge securities held in their CDP direct accounts to their brokers. This would facilitate investors using these securities to meet collateral requirements. To promote financial prudence, securities brokers will be required to collect a minimum of 5% of collateral from their customers for trading of listed securities.

1.3 The proposed policy amendments set out in this consultation are as follows -

- (a) Part 3: Enhancements to Supervisory Powers
- (b) Part 4: Strengthening of Business Conduct Requirements
- (c) Part 5: Pledging securities held in CDP direct accounts for collateralised trading

The proposed legislative amendments to the SFA, FAA and TCA and their relevant subsidiary legislation are set out in the Annexes 1 to 13.

A Policy Highlights Sheet which summarises the key proposals for consumers is available together with this consultation paper on the [consultation paper section of the MAS website](#).

1.4 MAS invites comments from all interested parties, and financial institutions regulated by MAS.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS

considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

1.5 Please submit written comments by 16 October 2015 to –

Capital Markets Intermediaries Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
Fax: (65) 62203973
Email: SFA_FAA_consult@mas.gov.sg

1.6 Electronic submission is encouraged. We would appreciate it if you can use this [\[link to consultation feedback submission document\]](#) for your submission to ease our collation efforts.

2 Introduction

2.1 MAS has identified various areas under the SFA, FAA and TCA where our supervisory powers and business conduct requirements for regulated persons can be further enhanced. The proposed changes are intended to rationalize existing requirements applicable to the various financial institutions ("FIs") regulated under these Acts; ensure that MAS is kept apprised of specified adverse developments in these FIs; provide for suitable powers of regulatory oversight; and align requirements for these FIs with those applicable to banks where appropriate. The proposed amendments set out in this Consultation Paper will apply to the following FIs (collectively, the "Regulated FIs"):

- (a) SFA-regulated entities, comprising:
 - (i) capital markets services licence holders ("CMSLs");
 - (ii) market infrastructure entities, consisting of
 - approved exchanges ("AEs") and recognised market operators ("RMOs");
 - approved clearing houses ("ACHs") and recognised clearing houses ("RCHs");
 - licensed trade repositories ("LTRs") and licensed foreign trade repositories ("LFTRs");
 - approved holding companies ("AHCs");
 - (iii) registered fund management companies ("RFMCs");
 - (iv) approved trustees for collective investment schemes ("ATs"); and
 - (v) exempt corporate financial advisers ("ECFs");
- (b) FAA-regulated entities, comprising licensed financial advisers ("LFAs") and exempt financial advisers ("EFAs");
- (c) TCA-regulated licensed trust companies ("LTCs"); and
- (d) banks, merchant banks, finance companies, insurance companies and registered insurance brokers exempt from licensing under the SFA and FAA (hereafter referred to as "Exempt FIs").

3 Enhancements to Supervisory Powers

Approval and removal of officers under the ambit of "Fit and Proper" criterion

3.1 The fitness and propriety of bank directors and executive officers is a key factor that MAS takes into consideration in deciding whether to approve their appointment. Such key appointment holders are also required to remain fit and proper throughout their tenure and their ceasing to be fit and proper may result in their removal from office. To align the grounds for removal of bank directors and executive officers with the key criterion for their approval, MAS will replace the current grounds for removal under the BA with a single criterion of the director or executive officer ceasing to be fit and proper.

3.2 Currently, certain Regulated FIs under the SFA, FAA and TCA (i.e. CMSLs, AEs, ACHs, LTRs, AHCs, LFAs and LTCs) are required to seek MAS' approval prior to appointing their CEOs (or Resident Managers in the case of LTCs) and directors, with the candidate's "fit and proper" status being the approval criterion. However, this requirement is not imposed on RMOs, RCHs and ATs. Further, there are differences in the criteria for the removal of officers for different categories of Regulated FIs under the respective Acts. For example, the SFA and TCA set out specific grounds for removal such as wilful contravention and non-compliance with regulatory requirements and failure to discharge one's duties. On the other hand, in addition to these grounds, the FAA allows for the removal of officers based on fit and proper grounds.

3.3 To ensure consistent treatment for all Regulated FIs, MAS proposes to amend the SFA to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors. MAS does not intend to impose this requirement on overseas incorporated market operators or clearing houses for which MAS is not the primary regulator. The appointment of key officers of such entities would already be subject to similar fit and proper requirements in their respective home jurisdictions. As part of our admission requirements, MAS would assess whether we are able to rely on the supervision of the respective home regulators of these entities.

Question 1. MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.

3.4 MAS also proposes to amend the grounds for removal of CEOs (or Resident Managers in the cases of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being “fit and proper”.

Question 2. MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being “fit and proper”.

Refining the effective control provisions under the SFA and FAA

3.5 Under section 97A of the SFA and section 57A of the FAA, a person must seek MAS’ approval prior to entering into an “arrangement” which would result in the person obtaining effective control of a CMSL or LFA. MAS notes that an “arrangement” may be deemed to have been entered into so long as there is an element of “understanding” between the licensee and potential controller, which may also exist at the early stage of negotiations for the takeover.

3.6 MAS proposes to amend section 97A of the SFA and section 57A of the FAA to better reflect our policy intent that a potential controller is only required to seek MAS’ approval prior to taking effective control of the CMSL or LFA (i.e. MAS’ prior approval is not required for the potential controller to enter into negotiations with the CMSL or LFA).

Question 3. MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS’ approval only prior to taking effective control of the CMSL or LFA.

Extending the effective control provisions to RMOs, RCHs and ATs

3.7 Currently, a person is not required to seek MAS’ approval prior to taking effective control of a locally incorporated RMO, locally incorporated RCH or AT. Given that MAS is the primary regulator for locally incorporated RMOs and locally incorporated RCHs, and the importance of ATs as independent oversight entities for retail funds, the potential takeover of a locally incorporated RMO, locally incorporated RCH or an AT would be of interest to MAS and should be subject to MAS’ approval. Accordingly, MAS proposes to extend effective control provisions to locally incorporated RMOs, locally incorporated RCHs and ATs. This will align MAS’ regulatory approach for locally

incorporated RMOs, locally incorporated RCHs, and ATs with that for CMSLs, LFAs, AEs, ACHs¹, LTRs and AHCs.

Question 4. MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.

Notification requirements concerning adverse information on FIs

3.8 Under the SFA, FAA and TCA, Regulated FIs (other than RFMCs, ECFs, EFAs and Exempt FIs) are already required to notify MAS of specified adverse developments (e.g. civil or criminal proceedings instituted against the FI) either via licence conditions or subsidiary legislation. To keep MAS better apprised of adverse developments of Regulated FIs (including their group entities where such developments affect the Regulated FIs) and matters affecting the fitness and propriety of the substantial shareholders or controllers and key officers of Regulated FIs, MAS proposes to amend the SFA, FAA and TCA to require Regulated FIs [other than Exempt FIs²] to notify MAS of:

- (a) any adverse development that materially affect or is likely to materially affect
 - (i) the FI itself;
 - (ii) the FI's group entities to the extent that the developments materially and adversely affect the FI; and
- (b) matters affecting the fitness and propriety of the FI's
 - (i) substantial shareholders or controllers; and
 - (ii) key officers³

¹ The control thresholds for AEs and ACHs in sections 27 and 70 of the SFA are set at 5%, 12% and 20%. As locally incorporated RMOs and locally incorporated RCHs are less systemically important entities, we propose to extend effective control provisions for shareholdings of 20% or more only.

² Exempt FIs such as banks and insurance companies are subject to similar requirements under their respective legislations.

³ Key officers include CEOs (and Resident Managers in the case of LTCs) and directors for all Regulated FIs. For AEs, ACHs, LTRs and AHCs, key officers also include other key management positions (e.g. deputy CEO) which are subject to MAS' approval.

3.9 Such adverse developments would include developments which may have an adverse impact on the entity's (i) financial soundness or reputation; or (ii) ability to serve its customers on a business-as-usual basis.

Question 5. MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers.

Foreign regulators' inspection of market infrastructure operators and ATs

3.10 Under section 150B of the SFA, a foreign regulator wishing to inspect a CMSL, an RFMC, an ECF or Exempt FI, will have to obtain the prior written approval of MAS. MAS also has powers to impose conditions on a foreign regulator for the inspection. The confidentiality of the report(s) produced upon such inspection by a foreign regulator is provided in section 150C of the SFA.

3.11 As the activities of markets, clearing houses and ATs regulated under the SFA have become increasingly cross-border in nature, there is now a greater likelihood that these entities will be subject to inspection by foreign regulators. To safeguard the confidentiality of information relating to the Singapore businesses of such entities, MAS proposes to extend the application of sections 150B and 150C to AEs, locally incorporated RMOs, ACHs, locally incorporated RCHs, LTRs, AHCs and ATs, such that foreign regulators wishing to inspect these entities will have to obtain the prior written approval of MAS and treat any report produced through such inspections as confidential.

Question 6. MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.

Inspection by an appointed agent of the foreign regulator

3.12 Under the FAA, TCA and BA, MAS may grant approval to foreign regulatory authorities to appoint an agent to inspect an FAA-regulated entity, LTC or bank in Singapore. MAS proposes to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.

Question 7. MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.

Appointment of external auditors of market infrastructure operators

3.13 It is important that the auditors appointed by AEs, ACHs, LTRs and AHCs be able to discharge their duties satisfactorily given the systemic importance of these entities. MAS thus proposes to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.

Question 8. MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.

4 Strengthening of Business Conduct Requirements

Failure to exercise reasonable care in submission of information

4.1 The submission of accurate information is important for MAS to make appropriate supervisory decisions. Currently, the submission of material false information by a person (whether an FI or individual) under the BA, SFA, FAA and TCA is an offence.

4.2 MAS proposes to provide powers within the SFA, FAA and TCA to make it an offence where Regulated FIs fail to take reasonable care to ensure the accuracy of information submitted to MAS. This will allow MAS to take action against a Regulated FI which persistently furnishes inaccurate information (even if the information is not material) to MAS. This is also in line with proposed amendments to the BA. MAS will carefully consider all relevant facts of each case, before deciding whether to take action against a Regulated FI which persistently furnishes inaccurate information (even if the information is not material).

4.3 MAS also proposes to set the maximum penalty for Regulated FIs' failure to exercise reasonable care in the submission of information at half the maximum penalty for the submission of material false information. The current penalty for submission of material false information is S\$50,000 under the SFA, and S\$25,000 under the FAA and TCA. Hence, the proposed penalty for failure to exercise reasonable care in submission of information will be S\$25,000 under the SFA, and S\$12,500 under the FAA and TCA.

Question 9. MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.

Service of notice, order or documents by MAS

4.4 The FAA and BA provide that any notice, order or document (collectively referred to as "documents") sent by registered post to any person at his last known place of residence, registered office or principal place of business, shall be deemed to have been duly served on him. The BA also sets out procedures for electronic service of documents, in that MAS may serve any document on a person through electronic service if he has given consent for electronic service of the document.

4.5 To accord greater legal certainty with regard to the service of documents by MAS, and rationalize requirements under the SFA, FAA and TCA with those under the BA, MAS proposes to introduce similar provisions for service of documents by:

- (a) registered post in the SFA and TCA; and
- (b) electronic means in the SFA, FAA and TCA.

Question 10. MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.

5 Pledging Securities held in CDP Direct Accounts for Collateralised Trading

5.1 Following MAS' and SGX's joint review in 2014 on securities market structure and practices in Singapore⁴, collateralised trading will be introduced to (a) enhance the securities brokers' credit risk management practices; and (b) promote prudent investing behaviour among investors. Under the new regime, brokers will collect collateral of at least 5% of customers' net open positions directly from each customer by end of trade day. As highlighted in the response to the joint consultation, investors would be allowed to use securities held in their CDP direct accounts to meet the collateral requirement.

5.2 Currently, investors are able to create statutory charges over securities held in their CDP direct accounts in favour of their brokers. To do so, investors will have to submit Form I (prescribed under regulation 23(1)(b) of the Companies (Central Depository Systems) Regulations⁵) *each time* they wish to change the securities pledged as collateral, and Form L each time they wish to discharge the security interest (e.g. when they intend to sell the securities).

5.3 MAS proposes to provide an additional, streamlined option for investors to pledge securities held in their CDP direct accounts⁶. Under the proposed option, investors would be able to create a statutory charge over a pool of securities in a segregated sub-balance of their CDP direct accounts. Conceptually, each CDP direct account would have a main balance and one or more sub-balances. An investor who wishes to pledge securities to a broker would be able to transfer⁷ these securities from his main balance to a sub-balance linked to that broker; all securities in that sub-balance would then be automatically charged without the need to furnish Form I each time

⁴ The consultation paper and MAS' response to comments received are available at: <http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2014/Review-of-Securities-Market-Structure-and-Practices.aspx>

⁵ Existing provisions relating to statutory charges are currently set out in the Companies Act (Cap. 50) and Companies (Central Depository Systems) Regulations. These provisions will be migrated to the SFA and Securities and Futures Regulations. Proposed amendments in section 5 will be made to the SFA after the relevant Companies Act provisions have been migrated to the SFA.

⁶ The existing arrangement described in paragraph 5.2 would remain. The additional streamlined option provides investors with an additional choice of pledging securities held in their CDP accounts.

⁷ Transfers may be effected online on CDP website (similar to online banking platforms) or through physical submission of forms to CDP.

securities are moved into the sub-balance. Table 1 provides an illustration of the current and proposed processes.

Table 1: Current and Proposed Processes to pledge securities in CDP account to brokers

	Current Process	Proposed Process for Additional Option
Investor wishes to pledge some securities held in his CDP account to meet collateral requirements for Trade A	Submit Form I, specifying name and quantity of securities pledged to broker	Submit Form I (one-off), specifying that securities in sub-balance are pledged to broker (regardless of name and quantity of securities)
Investor wishes to pledge more securities held in his CDP account to meet collateral requirements for his subsequent trade, Trade B	Submit Form I, specifying name and quantity of securities pledged to broker	Transfer securities to sub-balance. No need to submit Form I.

5.4 Under the streamlined option, MAS also proposes to allow for an automatic discharge of securities without the need to submit Form L when securities are transferred out of the sub-balance (e.g. when they are sold or returned to the main balance) with the broker's approval.

5.5 All securities that remain in the main balance of the investor's CDP direct account would remain unencumbered.

5.6 To further enhance convenience to investors and facilitate electronic submission of Form I, MAS proposes to remove the requirement for a witness signature on Form I. There are existing controls⁸ in place to ensure the authenticity of the investor's request in lieu of a witness signature.

Question 11. MAS seeks comments on the proposal to –
(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and
(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.

⁸ For instance, two-factor authentication is required for online logins to the CDP website. For physical submissions of Form I, the signature of the investor is verified against prior records.

Question 12. MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities.

5.7 MAS intends to effect collateralised trading after the new functionalities are available in CDP's and brokers' systems.

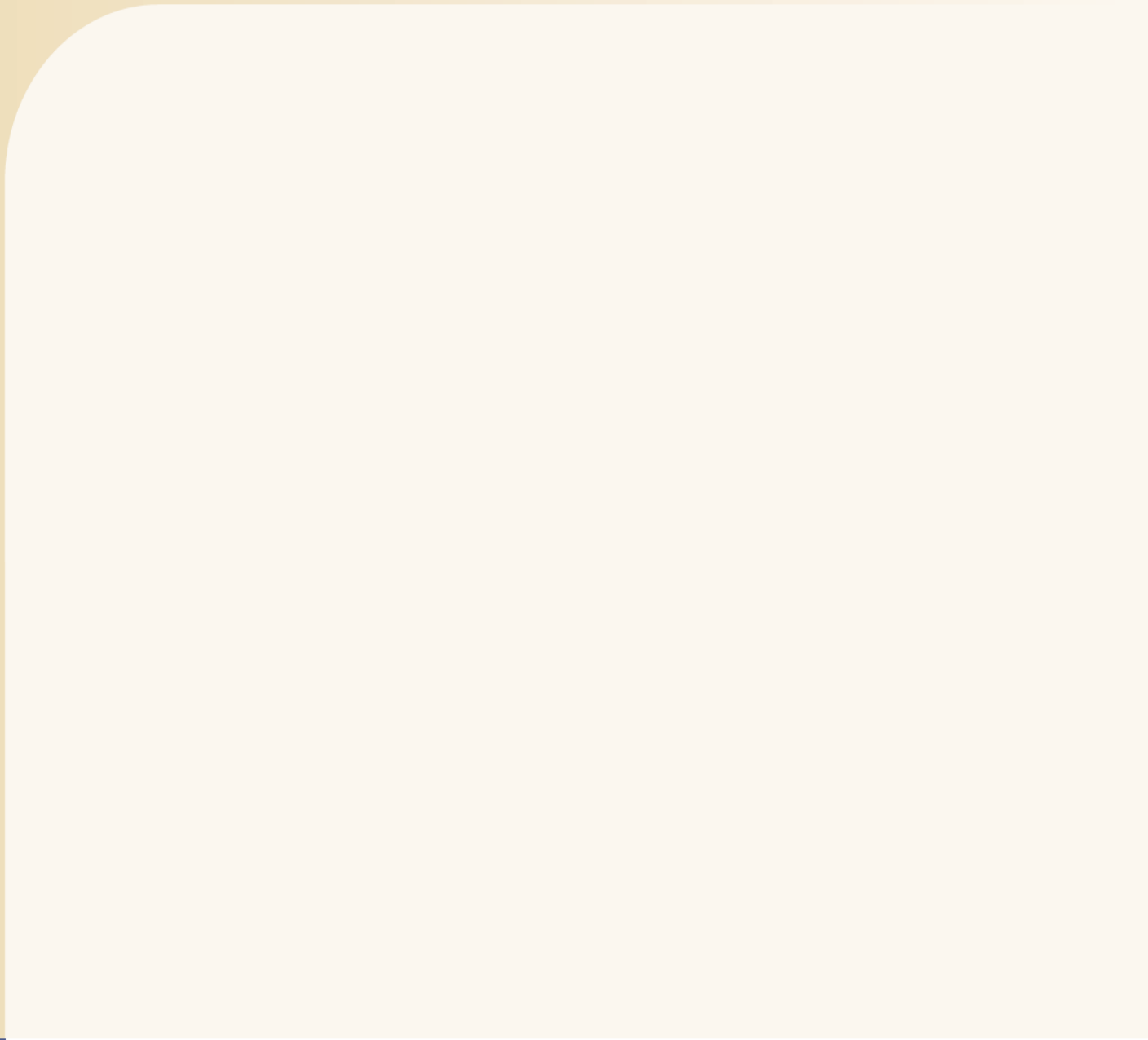
Question 13. MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.

Annex A

LIST OF QUESTIONS

- Question 1.** MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.....6
- Question 2.** MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper".7
- Question 3.** MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.....7
- Question 4.** MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.8
- Question 5.** MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers.9
- Question 6.** MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.....9
- Question 7.** MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.10
- Question 8.** MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.10
- Question 9.** MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.....11

Question 10. MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.	12
Question 11. MAS seeks comments on the proposal to –	14
(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and.....	14
(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker’s approval.	14
Question 12. MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities.	15
Question 13. MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.....	15



Monetary Authority of Singapore