

CONSULTATION PAPER

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Proposed Legislative Amendments to Exempt Execution-Related Advice in respect of Listed Excluded Investment Products from the Financial Advisers Act

MAS

Monetary Authority of Singapore

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1 Preface

1.1 On 29 December 2015, MAS published its response to consultation feedback on the proposed exemption of execution-related advice (“ERA”) in respect of listed excluded investment products (“EIPs”) from the Financial Advisers Act (“FAA”).

1.2 MAS is now consulting on the draft legislative amendments under the Financial Advisers Regulations (“FAR”) to effect the exemption, as well as consequential amendments to the Notice on Recommendations on Investment Products [Notice No. FAA-N16]. MAS will also make consequential amendments to the Guidelines for Conduct of Business for Execution-Related Advice [Guideline No. FAA-G08]. The proposed amendments are expected to take effect in 3Q 2016.

1.3 MAS invites interested parties to provide their comments on the proposed legal amendments, which are appended in the Annexes.

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.

1.4 Please submit written comments by 28 July 2016 to –

Capital Markets Intermediaries Department I
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
Email: cmi-reply@mas.gov.sg

1.5 Electronic submission is encouraged. We would appreciate that you use this suggested format template [here](#) for your submission to ease our collation efforts.

**DRAFT AMENDMENTS TO THE
FINANCIAL ADVISERS REGULATIONS**

Disclaimer: This version of the Regulations is in draft form and is subject to change. It is also subject to review by the Attorney-General's Chambers.

FINANCIAL ADVISERS REGULATIONS

PART I PRELIMINARY

[...]

Definitions

2.—(1) In these Regulations, unless the context otherwise requires —

[...]

“client’s money or property” has the same meaning as in section 28(4) of the Act;

“dealer” means a person exempt from holding a financial adviser’s licence under section 23(1)(a), (b) or (d) of the Act and who carries on a business of providing execution-related advice;

“entity” includes a corporation, an unincorporated association, a partnership and the government of any state, but does not include a trust;

[S 362/2005 wef 01/07/2005]

“execution activities” means –

(a) for the purposes of regulations [30] and [30A], the activity of dealing in securities, being securities that have received approval in-principle for listing and quotation on, or are listed for quotation or quoted on, any securities exchange or overseas securities exchange; and

(b) for the purposes of any other provision in this regulation, either or both of the following activities:

(i) dealing in securities, being securities that have received approval in-principle for listing and quotation on, or are listed for quotation or quoted on, any securities exchange or overseas securities exchange;

(ii) trading in futures contracts;

“execution-related advice” means advice which is provided to a client by a dealer or a trading representative acting on behalf of a dealer, as the case may be –

(a) in relation to the provision of the financial advisory service of advising others, either directly or through any publication or writing (other than by issuing or promulgating any research analysis or research report), concerning any investment product;

- (b) that is solely incidental to the execution activities carried out by the dealer or the trading representative acting on behalf of a dealer, as the case may be; and
- (c) where no discrete fee is charged by the dealer or trading representative, as the case may be, for the advice rendered;

“expert investor” has the same meaning as in section 4A(1)(b) of the Securities and Futures Act;

[S 274/2008 wef 28/05/2008]

[...]

“Registered Fund Management Company” means a corporation which is exempted from holding a capital markets services licence under paragraph 5(1)(i) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap. 289, Rg 10);²

“trading representative”, in respect of a dealer, means an individual who is an appointed representative, a provisional representative, or a temporary representative, of the dealer in respect of the execution activities, and where the terms “appointed representative”, “provisional representative” and “temporary representative” have the same meanings as in section 2(1) of the Securities and Futures Act.

[...]

PART VI EXEMPTIONS

[...]

Exemption for dealers

30. – (1) Where the conditions in paragraph (2) are satisfied, a dealer is exempt from –

- (a) section 27 of the Act (as it applies to a dealer by reason of section 23(4) of the Act) in relation to the dealer’s provision of execution-related advice in respect of any Listed Excluded Investment Product; and
- (b) section 23B(3) of the Act in relation to the provision of execution-related advice in respect of any Listed Excluded Investment Product by any of the dealer’s trading representatives on the dealer’s behalf.

(2) The conditions referred to in paragraph (1) are as follows:

- (a) prior to the opening of any trading account for a client, or prior to the provision of any execution-related advice in relation to any Listed Excluded Investment Product to a client, the dealer (as principal or through any of its trading representatives or otherwise) must provide the client a prominent disclosure in writing which contains a statement or the information to the effect that –
- (i) the execution-related advice provided by the dealer or its trading representative, in relation to the Listed Excluded Investment Product does not take into account any of the client’s investment objectives, financial situation or particular needs; and
 - (ii) it is the responsibility of the client to ensure the suitability of the Listed Excluded Investment Product which the client intends to invest in or invests in;
- (b) the dealer must put in place measures to ensure that each time its trading representative provides execution-related advice in respect of any Listed Excluded Investment Product to a client under paragraph (1)(a), the trading representative, at the same time, must provide to the client the rationale for such advice;
- (c) the dealer must establish and maintain a register containing the following details of each trading representative who provides execution-related advice in respect of any Listed Excluded Investment Product on behalf of the dealer under paragraph (1)(a):
- (i) name;
 - (ii) identity card number or passport number;
 - (iii) the date on which the trading representative commences the provision of execution-related advice in relation to any Listed Excluded Investment Products;
 - (iv) the date on which the trading representative ceases to provide execution-related advice in relation to Listed Excluded Investment Products.

Exemption of trading representatives

30A. – (1) Where the condition in paragraph (2) is satisfied, when a dealer is exempt from section 27 of the Act in relation to the provision of execution-related advice in respect of any Listed Excluded Investment Product, its trading representative is also exempt from section 23B(1) of the Act in relation to the provision of execution-related advice in respect of any Listed Excluded Investment Product on behalf of the dealer.

(2) The condition referred to in paragraph (1) is that each time the trading representative provides execution-related advice in respect of any Listed Excluded Investment Product to a client, the trading representative must, at the same time, provide to the client the rationale for such advice.

Definitions of terms in regulations [30] and [30A]

30B. – In regulations [30] and [30A] and this regulation –

“asset-backed securities” has the same meaning as in section 262(3) of the Securities and Futures Act;

“client” includes a prospective client;

“Listed Excluded Investment Product” means –

(a) any of the following securities that have received approval in-principle for listing and quotation on, or are listed for quotation or quoted on, any securities exchange or overseas securities exchange:

(i) any stocks or shares issued or proposed to be issued by a corporation or body unincorporate (other than a corporation or body unincorporate which is a collective investment scheme);

(ii) any unit, as defined in section 239 of the Securities and Futures Act, of a share which represents ownership in an underlying share, where –

(A) the underlying share is held on trust for a unitholder by a custodian; and

(B) the unitholder is not obliged to pay any additional consideration (other than administrative fees) when he converts any unit of the share into the underlying share;

(iii) any right, option or derivative issued or proposed to be issued by a corporation or body unincorporate in respect of its own stocks or shares;

(iv) any unit in a business trust;

(v) any derivative of a unit in a business trust;

(vi) any unit in a collective investment scheme which –

(A) is a trust; and

(B) invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes;

(vii) any unit in a collective investment scheme, relating to which –

(A) the constitutive documents;

(B) the prospectus; or

(C) any other document issued in connection with an offer of units in the scheme, being an offer that is not required to be made in or accompanied by a prospectus under section 296(1) of the Securities and Futures Act,

(referred to in this definition as the “CIS documents”) contain covenants or restrictions, the effect of which is that the manager of the scheme must –

(a) only invest in the following:

(i) deposits as defined in section 4B(4) of the Banking Act (Cap. 19);

(ii) gold certificates, gold savings accounts or physical gold;

(iii) any securities specified under paragraphs (a)(i) to (viii) or (b);

(iv) any product, instrument, contract or arrangement not specified under paragraphs (a)(i) to (viii) and (b), and only if the investment in such product, instrument, contract or arrangement is solely for the purpose of hedging or efficient portfolio management; or

(v) any product, instrument, contract or arrangement specified under sub-paragraph (a)(i), (ii), (iii) or (iv) only, notwithstanding that the CIS documents – may provide that the manager of the scheme may invest in any product, instrument, contract or arrangement not specified under sub-paragraph (a)(i), (ii), (iii), or (iv), for the sole purpose of complying with any applicable written law, regulations, directions, rules or non-statutory instrument of the jurisdiction where the scheme is constituted, operating or investing, which restricts or prohibits the manager of the scheme from investing in the product, instrument, contract or arrangement specified in sub-paragraph (a)(i), (ii), (iii), or (iv); and

(b) not engage in any securities lending or repurchase transaction in relation to the scheme, except where –

- (i) the securities lending or repurchase transaction, as the case may be, is carried out for the sole purpose of efficient portfolio management; and
- (ii) the total value of securities subject to securities lending and repurchase transactions does not exceed 50% of the net asset value of the scheme at any time;
- (viii) any debenture other than –
 - (A) asset-backed securities; or
 - (B) structured notes; or
- (b) two or more of the securities specified under paragraphs (a)(i) to (viii) that are linked together in a stapled manner such that one such securities may not be transferred or otherwise dealt without any of the other securities;

“structured notes” has the same meaning as in regulation 2(1) of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005;

[...]

Non-application of sections 38 and 39 of Act for certain persons

34A.—(1) Sections 38 and 39 of the Act do not apply to the following:

- (a) any bank in Singapore or any merchant bank which is exempt under the Financial Advisers (Exemption from Sections 25 to 29 and 36) Regulations (Rg 6) in respect of the provision of any financial advisory service relating to an existing product or a new product within the meaning of those Regulations, in relation to its business of providing such service;
- (b) a bank or merchant bank which is exempt from holding a financial adviser’s licence under section 23(1)(a) or (b) of the Act in relation to its business involving an activity for which it is exempt under regulation 27A from complying with section 23(4) of the Act;
- (c) a licensed financial adviser or an exempt financial adviser who solely advises others by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product;
- (d) a licensed financial adviser or an exempt financial adviser, in relation to —

- (i) its business of providing any financial advisory service to a client who is an accredited investor, an expert investor or an institutional investor or which is not a natural person;
- (ii) its business of providing any financial advisory service through a department, division, section or unit within the financial adviser, for which the department, division, section or unit within the financial adviser has been exempted under section 100(2) of the Act from having to comply with —
 - (A) sections 25, 27, 28 and 36 of the Act; and
 - (B) the relevant written directions;
- (iii) its business of making recommendations with respect to life policies which are sold as an ancillary product to loans with a simple payment basis for the insurance cover (including policies that cover outstanding loans such as personal loans, car loans and credit card balances, but excluding mortgage reducing term assurance plans);
- (iv) its business of making recommendations with respect to selling or purchasing group life policies;
- (v) its business of providing execution-related advice as a dealer;
- (vi) its business of providing any financial advisory service where —
 - (A) only factual information is provided to a client with respect to any investment product (including the marketing of any designated investment product through the use of direct response, advertising, or communications through any medium); and
 - (B) no advice or recommendation is provided by the licensed financial adviser, exempt financial adviser or their representatives, to such client with respect to such investment product;
- (vii) its business involving an activity for which the licensed financial adviser or exempt financial adviser is exempt under regulation 31, 32B, 34 or 36 from complying with section 27 of the Act; or
- (viii) its business involving an activity to which section 27 of the Act does not apply to a licensed financial adviser or an exempt financial adviser by virtue of regulation 18A.

(2) In this regulation —

“collective investment scheme” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);

~~“dealer” means a person exempt from holding a financial adviser’s licence under section 23(1)(a), (b) or (d) of the Act and who carries on a business of providing execution-related advice;~~

“designated investment product” has the same meaning as in section 25(6) of the Act;

~~“execution activities” means either or both of the following activities as defined in Part II of the Second Schedule to the Securities and Futures Act:~~

~~(a) dealing in securities (other than units in collective investment schemes) that are listed for quotation or quoted on a securities exchange, overseas securities exchange or recognised market operator;~~

~~(b) trading in futures contracts;~~

“group life policy” means a life policy in respect of which —

(a) the policy owner is not an individual; and

(b) there are 2 or more insured persons;

“overseas securities exchange” has the same meaning as in section 2(1) of the Securities and Futures Act;

“policy owner” has the same meaning as in the First Schedule to the Insurance Act (Cap. 142);

“relevant written directions” means the following written directions issued by the Authority under section 58 of the Act:

(a) Notice on Recommendations on Investment Products (Notice No. FAA-N16);

(b) Notice on Appointment and Use of Introducers by Financial Advisers (Notice No. FAA-N02);

(c) Notice on Information to Clients and Product Information Disclosure (Notice No. FAA-N03);

(d) Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers (Notice No. FAA-N13).

[S 815/2015 wef 01/01/2016]

**DRAFT AMENDMENTS TO THE NOTICE ON
RECOMMENDATIONS ON
INVESTMENT PRODUCTS [NOTICE NO. FAA-N16]**

Disclaimer: This version of the amendments to MAS Notice FAA-N16 is in draft form and is subject to change.

Notice No : FAA-N16 (Amendment) 2016
Issue Date : [Date] 2016

NOTICE ON RECOMMENDATIONS ON INVESTMENT PRODUCTS

Introduction

1 This Notice is issued pursuant to section 58 of the Financial Advisers Act (Cap. 110) (the “Act”) and amends the MAS Notice FAA-N16 on Recommendations on Investment Products [Notice No. FAA-N16] (the “Existing Notice”).

Amendments

2 The Existing Notice issued on 28 July 2011 and last revised on 29 April 2015, is amended as follows:

(a) by deleting paragraph 3 and substituting the following paragraph:

“3 This Notice shall not apply to persons specified in paragraph 2 who are exempted from complying with section 27 of the Act under regulations 18A, 27A, 28, 30, 31(4), 31(5), 31(7), 31(8), 32B, 34 and 36 of the FAR only in respect of the activities for which they are exempt under these regulations.” ;

(b) by deleting the definition of “dealer” in paragraph 6, and substituting the following definition:

“ “dealer” has the same meaning as in regulation 2(1) of the FAR;” ;

(c) by deleting the definition of “execution activities” in paragraph 6;

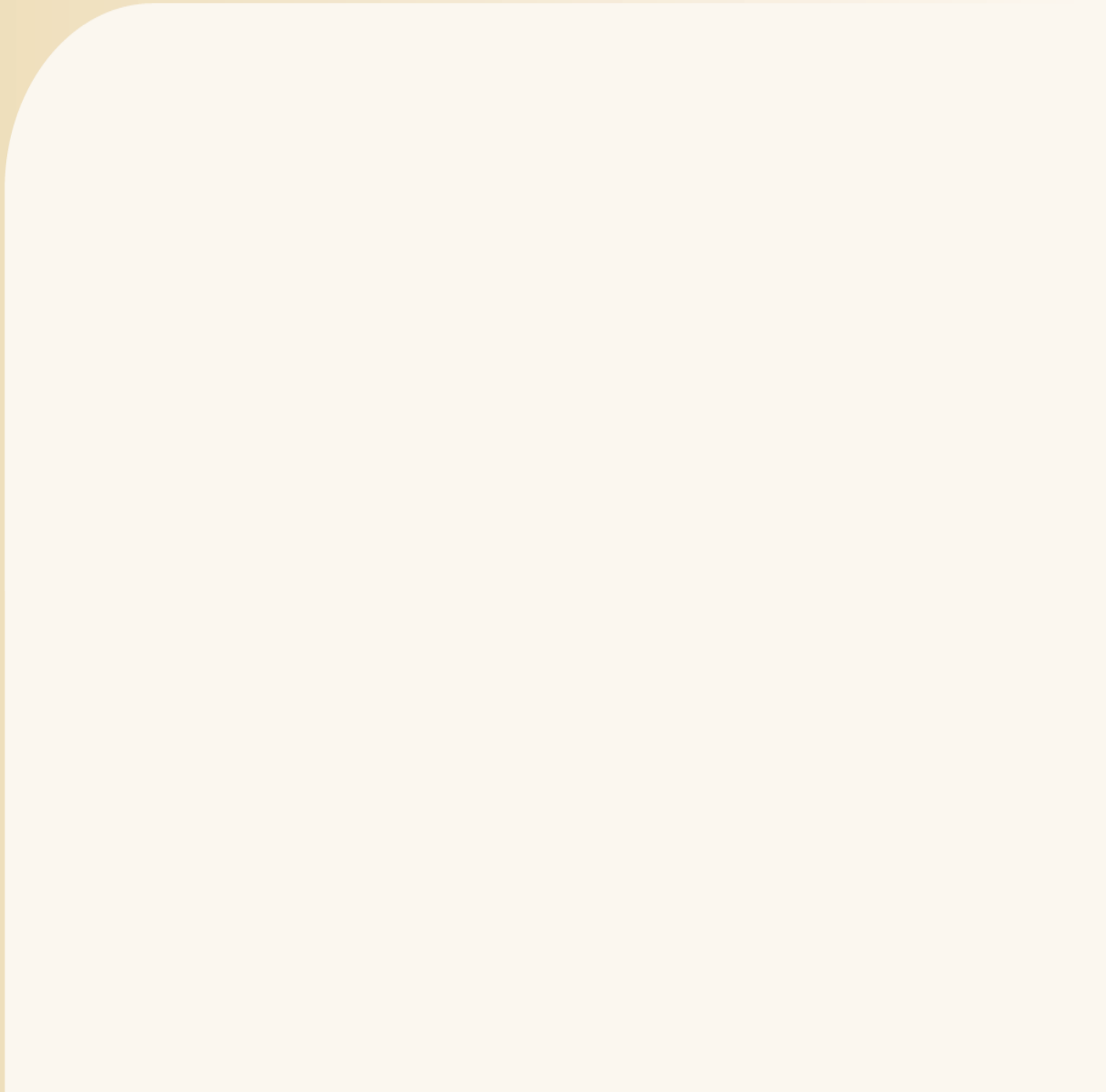
(d) by deleting the definition of “execution-related advice” in paragraph 6 and substituting the following definition:

“ “execution-related advice” has the same meaning as in regulation 2(1) of the FAR;” ; and

(e) by deleting the definition of “securities exchange” in paragraph 6.

Commencement

3 This Notice shall take effect on [Date] 2016.



Monetary Authority of Singapore