RESPONSE TO FEEDBACK RECEIVED

November 2016

Response to Feedback Received – Proposed Amendments to the Securities and Futures Act

Monetary Authority of Singapore

Contents

1 Preface

1.1 On 11 February 2015, MAS issued a Consultation Paper on Proposed Amendments to the Securities and Futures Act ("SFA"), proposing amendments to extend the SFA scope to regulate over-the-counter ("OTC") derivatives (including the transfer of regulatory oversight of commodity derivatives from the Commodity Trading Act ("CTA")).

1.2 MAS also proposed other amendments, to strengthen MAS' enforcement regime, enhance the transparency of short selling activities and revise the criteria for recognising foreign collective investment schemes.

1.3 The proposed amendments were divided into three parts:

(a) Part A: Amendments arising from the OTC Reforms
(b) Part B: Transfer of Regulation of Commodity Derivatives from CTA to SFA
(c) Part C: Other Amendments to the SFA

1.4 The consultation period closed on 24 March 2015. MAS would like to thank all respondents for their contributions. The list of respondents is provided in the **Annex**.

1.5 The finalised amendments to the SFA to implement the proposals are contained in the proposed Securities and Futures (Amendment) Bill 2016 ("the Bill"), which has been introduced in Parliament today. The Bill can be accessed at the following link:

- https://www.parliament.gov.sg/sites/default/files/Securities%20and%20Futures%20(Amendment)%20Bill%2035-2016.pdf

1.6 The Bill incorporates feedback received, where MAS has agreed with the feedback. Comments that are of wider interest, together with MAS' responses, are set out below.

2 Part A: Amendments arising from OTC reforms

2.1 Amendments to Part I (Preliminary) of the SFA

2.1.1 Respondents indicated broad support for the introduction of simple, principles-based definitions more easily understood by the industry and general investing public. The feedback received focused on clarifying how products would be categorised under the new definitions and the regulatory effects of this re-categorisation. Some respondents suggested the introduction of new definitions or the modification of proposed definitions to provide greater clarity.

(a) Revised definition of "derivatives contract"

2.1.2 Many respondents sought clarification on the reclassification of certain products based on the revised definition of "derivatives contract". Several questions were raised on how sub-categories of a "derivatives contract" are related to each other, such as the distinction between an "exchange-traded derivatives contract" and a "futures contract". A few respondents also suggested that OTC derivatives be separately defined in order to better understand what the term referred to.

MAS' Response

2.1.3 MAS has taken in suggestions and feedback in making various clarifications to the definition of "derivatives contract", and has fine-tuned these definitions accordingly, in particular, by amending the definition of "derivatives contract" to exclude units in a collective investment scheme ("CIS").

2.1.4 We have also provided in the definition of "exchange-traded derivatives contract" more details on its characteristics (e.g. executed on an organised market and cleared by a clearing facility performing the role of a central counterparty), and clarified that a "futures contract" is a sub-set of "exchange-traded derivatives contract". OTC derivatives refer to all "derivatives contracts" other than "exchange-traded derivatives contracts", and will be defined as necessary in relation to specific Regulations.

2.1.5 With the introduction of new product definitions, MAS will separately issue guidance to explain the definitions and their interactions.

(b) Revised definition of "securities"

2.1.6 Several respondents sought clarification on the interaction of the definition of "securities" with units in a CIS and with securities-based derivatives contracts, such as company warrants, and hybrid instruments. A few respondents asked if the Code on Collective Investment Schemes ("CIS Code") would be updated. One respondent also sought to understand the rationale for changing the existing definition of "securities".

MAS' Response

2.1.7 By introducing the revised definition of "securities", MAS seeks to align the legal definition with a simple understanding of "securities", confining it to represent only equity instruments representing legal or beneficial ownership interests and debt instruments. A CIS does not fall under this plain meaning of "securities" and as such, is defined separately. The CIS Code will be updated accordingly to reflect the revised definitions proposed.

(c) Definition of "capital markets products"

2.1.8 A majority of the respondents commented on the need for market participants to more clearly understand the type of products that would fall under the definition of "capital markets products". One respondent requested clarification on the regulatory intent for various capital markets products under section 27 of the Financial Advisors Act ("FAA"), given the expanded scope of the "capital markets products" definition.

MAS' Response

2.1.9 MAS will provide guidance on the scope of products under each definition. With respect to the FAA, the definition of "investment products" currently includes "capital markets products" in the SFA, and will continue to reference the expanded scope of the "capital markets products" definition accordingly.

(d) Definition of "organised market"

2.1.10 Several respondents noted that the term "issued securities" was no longer used, and suggested that this be retained to make clear that primary issuances of shares and bonds would continue to be excluded from regulation as "organised markets".

MAS' Response

2.1.11 As with the existing definition of "securities market" and "futures market", MAS has provided an exclusion for places or facilities used by one person to make or accept offers. As such, primary issuance of shares and bonds would already be excluded from regulation as "organised markets".

2.2 Amendments to Part II (Markets) of the SFA

2.2.1 Respondents supported the regulation of electronic platforms under Part II of the SFA. Some respondents queried whether operators facilitating transactions in OTC derivatives through "voice-assisted" means would be regulated as market operators, and a few respondents noted that such operators functioned more akin to brokers than market operators. Several respondents also felt that an operator with both electronic and "voice-assisted" means of trading should not be considered to be a market operator as the operation of the electronic platform was incidental to the voice platform.

MAS' Response

2.2.2 MAS intends to proceed with the regulation of facilities for the trading of OTC derivatives under Part II of the SFA. MAS noted that the concerns regarding the regulation of operators facilitating trading through "voice-assisted" means as market operators. MAS

appreciates that the way buyers and sellers are brought together and the way their orders are matched may be such that these operators may be more appropriately characterised as carrying out broking activities, especially in the case of operators that solely operate through "voice-assisted" means. In such cases, MAS intends to subject these operators to the regulatory regime for capital markets intermediaries, under Part IV of the SFA. However, it remains possible that operators may in fact be operating markets, even through "voice-assisted" means, in particular if in combination with the use of electronic facilities, and should therefore be regulated within the ambit of Part II of the SFA.

2.2.3 MAS will publish guidance on when an operator of an electronic facility or otherwise will be considered to be operating a market. Operators should assess how their operations meet the characteristics of market operations, or of broking, and engage MAS in advance. MAS will consult on arrangements for the transition to the new regulatory regime in due course.

2.3 Amendments to Part VIA (Reporting of derivatives contracts) of the SFA

2.3.1 No respondents objected to the proposed amendments to lift banking confidentiality for the purposes of reporting obligations, and to clarify that all trades booked in Singapore (even if not traded in Singapore) have to be reported.

2.3.2 A few respondents asked if changes to the definition of "derivatives contracts" in the SFA would affect the scope of trades to be reported, in particular whether futures contracts remain excluded from reporting obligations. Some respondents also sought clarification regarding the application of reporting obligations to agents of a party to a contract.

MAS' Response

2.3.3 There is no change to the current policy intent to subject only OTC derivatives to reporting obligations. MAS will amend the Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013 accordingly, taking into account the new product definitions.

2.3.4 The amendments to the provisions in Part VIA are primarily editorial changes which serve to clarify the effect of the provisions. MAS has published FAQs on the Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013 to aid implementation of the reporting obligations, and will update the FAQs to take into account changes to the SFA.

2.4 New Part VIC (Trading of derivatives contracts) of the SFA

2.4.1 Respondents were supportive of MAS' approach to introduce legislative powers for MAS to implement a trading mandate, and agreed that a trading mandate should not be implemented at this stage. A few respondents requested for MAS to share its considerations for any future trading mandate and to consult should there be plans to commence a trading mandate.

MAS' Response

2.4.2 MAS intends to proceed with the introduction of the new Part VIC, as set out in the Bill. MAS will conduct detailed analysis to determine the conditions that might make a trading mandate necessary and consult the public on any plans to commence a trading mandate in Singapore.

2.5 Amendments to Part IV and the Second Schedule (Regulated activities) to the SFA, and the Second Schedule to the SF(LCB)R

(a) Dealing in capital markets products

2.5.1 No objections were raised to MAS' proposal to introduce the regulated activity of "dealing in capital markets products", which encompasses the current regulated activities of "dealing in securities", "trading in futures contracts" and "leveraged foreign exchange trading", as well as the new regulated activity of dealing in OTC derivatives. Several respondents sought clarifications as to how the new regulated activity of "dealing in capital markets products" would affect market participants and their representatives who deal in products that are currently unregulated but will be brought under the ambit of the SFA.

MAS' Response

2.5.2 MAS will proceed with the proposal to introduce the new regulated activity of "dealing in capital markets products" under the SFA. A capital markets services ("CMS") licensee or an exempt financial institution[1] ("EFI") will be required to indicate the specific type of capital markets products (namely, securities, CIS, exchange-traded derivatives contracts, OTC derivatives contracts and spot foreign exchange traded on a margin basis) that the financial institution or its representative will be dealing in. MAS will publish information on the product type which a financial institution and its appointed

[1] These are entities exempted under section 99(1)(a), (b), (c), and (d) of the SFA, i.e. banks, merchant banks, finance companies and insurance companies which are licensed by MAS.

representatives are allowed to deal in on the Financial Institutions Directory and the Register of Representatives, respectively, on MAS' website.

2.5.3 A CMS licensee which intends to expand its dealing activity into a new product type will need to seek MAS' approval for a variation of its CMS licence. Similarly, an EFI or an appointed representative of a CMS licensee or an EFI who intends to expand his dealing activity into a new product type will need to notify MAS of the additional product type[2] that he intends to deal in. As for an entity which is currently not regulated by MAS but is dealing in products which will be brought under the ambit of the SFA (e.g. retail commodity OTC derivatives contracts), this entity will need to apply for a CMS licence from MAS.

2.5.4 MAS would also like to clarify that the revised classification of regulated activities will not affect the scope of regulated activities currently carried out by CMS licensees, EFIs and their existing appointed representatives under the SFA. The names of the current regulated activities carried out by the CMS licensees, EFIs and their existing appointed representatives will be changed to reflect the corresponding new regulated activities. Existing appointed representatives will not be required to comply with additional Capital Markets and Financial Advisory Services ("CMFAS") examination requirements if there is no change to the scope of their activities under the new regime. For instance, an appointed representative who carries out the regulated activity of trading in futures contracts for his principal company under the current regime may continue to do so under the new regime without having to pass any additional CMFAS module, although the regulated activity which he conducts will be changed to "dealing in capital markets products in respect of exchange-traded derivatives contracts".

2.5.5 Given the changes to the definitions of the products and regulated activities under the SFA, MAS will be making consequential amendments to the FAA. As with the SFA, the changes to the definitions of products and regulated activities under the FAA will not affect the scope of regulated activities currently carried out by licensed financial advisers, EFIs and their existing appointed representatives. Neither will existing appointed representatives be required to take additional CMFAS examinations in order to conduct their current scope of activities under the framework.

[2] For the avoidance of doubt, a CMS licensee, EFI or its representative who is licensed to carry out dealing in exchange-traded derivatives contracts or OTC derivatives contracts may deal in derivatives contracts on all five underlying asset classes without the need to obtain any further approval or authorisation from MAS.

(b) Licensing exemptions

2.5.6 Respondents were generally supportive of MAS' proposals to exempt certain entities from the requirement to hold a CMS licence for "dealing in capital markets products" in respect of OTC derivatives contracts. The proposed exemptions include:

(i) Entities entering into OTC derivatives contracts for their own account with a bank or other financial institution regulated for dealing in OTC derivatives contracts (whether in Singapore or elsewhere) and which do not derive or receive a spread or other remuneration [3] in return (referred to as "Own-account Dealing exemption"), for example corporates which enter into OTC derivatives contracts with a bank for their own risk management; and

(ii) Entities dealing in OTC derivatives contracts but which do not take on any principal position, do not accept, handle or hold any customer's position, margin, account or money, and which deal only with institutional investors ("IIs") and corporate accredited investors ("AIs"). These entities (e.g. inter-dealer brokers) will be required to register with MAS upon commencement of business, and comply with certain requirements (referred to as "Registered OTC Brokers").

2.5.7 Respondents were also supportive of MAS' proposed licensing exemption for entities dealing in futures contracts which do not take on any principal position; do not accept, handle or hold any customer's position, margin, account or money; and which deal only with IIs and corporate AIs. These entities will be required to register with MAS upon commencement of business, and comply with certain requirements (referred to as "Registered Futures Brokers").

Own-account Dealing Exemption

2.5.8 One respondent commented that the phrase "a spread or other remuneration" in the condition to the Own-account Dealing exemption is too broad as it captures any form of commercial benefit arising from the transaction (e.g. trade profits arising from market movements or a hedging transaction). This condition may therefore have the effect of denying most parties the benefit of the exemption. Another respondent noted there are jurisdictions which do not regulate intermediaries dealing in OTC derivatives contracts and asked MAS to broaden the licensing exemption to cover all entities that deal in OTC derivatives contracts, regardless whether they are dealing with regulated or unregulated entities. Several other respondents suggested that the term "other remuneration" should exclude transfer pricing arrangements between entities within the

[3] The term "remuneration" is defined to include non-monetary incentive, benefit or reward.

same group given that it is quite common for an entity to trade for the account of a related entity, and in return, receive arm's length compensation or remuneration from the related entity.

MAS' Response

2.5.9 The Own-account Dealing exemption is meant to exempt entities which deal for their own account in OTC derivatives with financial institutions and do not derive a spread or other remuneration from the transaction. These entities primarily enter into the OTC derivatives transactions for their internal risk management or hedging purpose (as opposed to market makers or liquidity providers who primarily enter into OTC derivatives transactions to capture trading profit from a spread (e.g. between bid and ask prices) and typically stand ready to enter into OTC derivatives transactions). Having considered the feedback, MAS would like to clarify that the term "a spread or other remuneration" refers to "a spread or other remuneration derived from entering into transactions in OTC derivatives contracts with counterparties". This would exclude gains made from movements in the value of an OTC derivatives contract which has been entered into for risk management or hedging.

2.5.10 In response to the feedback on intra-group transactions, MAS will exempt entities which enter into OTC derivatives transactions for their own account or the account of a related entity[4] and deal only with another related entity (i.e. intragroup transactions). This licensing exemption will cover entities which trade for the account of a related entity, and in return, receive arm's length compensation or remuneration from the related entity. Where the entities trade for their own account or the account of a related entity and deal with a non-related regulated financial institution, they will also be exempted from licensing if they satisfy the condition of not receiving any remuneration from the non-related financial institution counterparty.

2.5.11 On the comment that MAS should exempt all entities dealing in OTC derivatives, such a blanket exemption would negate the intent of expanding the scope of the SFA to regulate OTC derivatives. Our proposal to regulate OTC derivatives is in line with other major jurisdictions such as the United States, United Kingdom, Australia, and Hong Kong, who similarly regulate or have proposed to regulate entities dealing in OTC derivatives. MAS intends to license entities providing services of dealing in OTC derivatives to users of OTC derivatives and has proposed licensing exemptions[5] to sufficiently exclude end-users

[4] As defined in section 6 of the Companies Act (Cap.50).

[5] E.g. the Own-account Dealing Exemption (refer to paragraph 2.5.9), intra-group transactions exemption (refer to paragraph 2.5.10), or where the OTC derivatives are commodity-based, the exemption when dealing with AIs, IIs, or expert investors (refer to paragraph 3.2.5) and the exemption for approved global trading companies (refer to paragraph 3.2.1).

from the requirement to hold a CMS licence. The proposed exemptions are also similar to those available in the other major jurisdictions.

Exemptions for Registered OTC Brokers and Registered Futures Brokers

2.5.12 In relation to the proposed licensing exemptions for Registered OTC Brokers and Registered Futures Brokers, there were requests for MAS to broaden the scope of the exemptions to include entities dealing with individual AIs such as proprietary traders. There were also requests to extend the exemption to entities dealing with commodity trading firms which are unable to meet the AI definition but which can be considered "expert investors" ("EIs") under the SFA.

2.5.13 One respondent noted that there are entities currently holding a CMS licence to trade in futures contracts that have a similar business model as Registered Futures Brokers, in that they do not hold customers' money or take on any principal position and deal only with AIs ("Licensed Futures Brokers"). The respondent raised the concern of an un-level playing field between such Licensed Futures Brokers and Registered Futures Brokers, given that the latter are not subject to the business conduct requirements under the SFA. The respondent was of the view that this may lead to customers preferring to deal with Registered Futures Brokers as they are subject to less onerous regulatory requirements. The respondent requested MAS to exempt such Licensed Futures Brokers from the existing requirements to provide customers with a risk disclosure statement[6] and to perform customer due diligence.

MAS' Response

2.5.14 MAS agrees with the suggestion to broaden the licensing exemptions for Registered OTC Brokers and Registered Futures Brokers to include entities which deal with proprietary traders that meet the AI thresholds (i.e. individual AIs) and commodity trading firms (i.e. EIs). These investors are generally sophisticated and experienced in trading futures and OTC derivatives contracts. In addition, under the new opt-in regime for AIs, all AI-eligible investors would have to consciously opt in to be classified as an AI and accept the consequent reduction in regulatory safeguards.

2.5.15 On the regulatory playing field for Registered Futures Brokers vis-à-vis Licensed Futures Brokers, MAS would like to clarify that there is a distinction in the scope of business between the two types of entities. Registered Futures Brokers are allowed to deal only in block futures trading while Licensed Futures Brokers may deal in both block and on-screen futures trading. Registered Futures Brokers are thus prohibited from

[6] Under the Securities and Futures (Licensing and Conduct of Business) Regulations, Licensed Futures Brokers are required to provide a risk disclosure document using MAS' prescribed form (i.e. Form 13).

holding memberships which accord any on-screen trading or clearing rights with an approved exchange or clearing house. Registered Futures Brokers may only hold membership which entitles them to register or enter information on block futures traded on behalf of their customers into the trade registration system of the exchange or clearing house. Registered Futures Brokers will thus be subject to a lower level of regulatory oversight due to their limited operations.

2.5.16 MAS agrees that there is merit to the feedback on risk disclosure requirements and will exempt Licensed Futures Brokers which serve the same clientele as Restricted Futures Brokers from the requirement to provide a risk disclosure statement. Licensed Futures Brokers will be exempt from the risk disclosure requirement when they deal with AIs, IIs or EIs. A person will have to make a conscious decision to be treated as an AI under the new opt-in regime and accept the consequent reduction in regulatory safeguards. IIs and EIs, on the other hand, are generally sophisticated and experienced in trading, and do not require the same level of protection as retail investors.

2.5.17 MAS disagrees with the suggestion to exempt Licensed Futures Brokers from the requirement to perform customer due diligence. MAS notes that Licensed Futures Brokers and Registered Futures Brokers will both be subject to the requirements under the MAS Notice on Prevention of Money Laundering and Countering the Financing of Terrorism, including the requirement to perform customer due diligence. As such, there will not be any difference between these two types of brokers in this regard.

2.5.18 Given that Registered OTC Brokers and Registered Futures Brokers are only permitted to deal with AIs, IIs and EIs, MAS will also exempt them from having to hold a financial adviser's licence under the Financial Advisers Act (Cap. 110) ("FAA") when providing financial advisory services. This is consistent with the position taken for registered fund management companies who are also exempted from licensing under the FAA for the provision of financial advisory services.

Other Licensing Exemptions

2.5.19 Some respondents sought clarification on whether insurance firms dealing in capital markets products for the purpose of risk management will be exempted from licensing.

MAS' Response

2.5.20 Currently, entities licensed under the Insurance Act (Cap. 142) ("insurance companies") are exempted from the requirement to hold a CMS licence in respect of dealing in securities, trading in futures contracts or leveraged foreign exchange trading which is solely incidental to the conduct of fund management activities for their insurance

business. Consistent with the current approach, MAS would like to clarify that insurance companies will similarly be exempted from the requirement to hold a CMS licence in respect of their dealing in OTC derivatives contracts which is solely incidental to the conduct of fund management activities for their insurance business.

(c) Fund Management

Class exemptions in relation to CIS investing in non-capital markets products ("physical asset CIS") offered to accredited investors ("AIs") or institutional investors ("IIs")

2.5.21 Respondents were supportive of the proposed exemption from licensing for managers of physical asset CIS offered only to AIs or IIs.

MAS' Response

2.5.22 MAS will proceed to grant a class exemption for managers of physical asset CIS which are offered solely to AIs or IIs from licensing requirements. In line with the class exemption for managers, MAS will not require physical asset CIS offered to AIs to comply with the notification requirement applicable to offers of restricted schemes ("restricted schemes' regime").[7] Nonetheless, MAS will require these CIS to furnish MAS with certain information relating to the scheme, including an information memorandum. MAS will also require these CIS to set out in their offer documents that the schemes are (i) exempted from scheme approval and prospectus registration requirements and (ii) have not been notified to MAS. MAS will consult on the drafting of the refinements to the restricted schemes' regime exemption in due course.

2.5.23 Managers of physical asset CIS offered to retail investors, including CIS offered pursuant to the Small Schemes exemption[8], will be required to be licensed by MAS. Likewise, physical asset CIS that are offered to retail investors at a consideration of not less than S$200,000 (or its equivalent in a foreign currency) for each transaction will be

[7] A "restricted scheme" refers to a scheme that is exempted under section 305 of the SFA from authorisation or recognition (collectively referred to as "scheme approval" in this response paper) and prospectus registration requirements.

As a condition to this exemption, restricted schemes must comply with requirements set out in the Sixth Schedule to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005. One of the requirements that a restricted scheme must comply with before making an offer is to notify MAS of the restricted scheme through MAS' "CISNET" portal and be entered into the list of restricted schemes maintained by MAS.

[8] Offers of units in a CIS that, within any period of 12 months, raises no more than S$5 million (or its equivalent in a foreign currency) or are made to no more than 50 investors, are exempted under sections 302B and 302C of the SFA from scheme approval and prospectus registration requirements

required to adhere to MAS' regulatory requirements for restricted schemes before the commencement of an offer.

Safeguards when custodising the physical assets of a CIS

2.5.24 MAS had sought feedback on safeguards when managers of physical asset CIS custodise assets with unregulated service providers. There was broad support for strong safeguards for CIS offered to retail investors but a few respondents were of the view that custody safeguards were not necessary for physical asset CIS offered to AIs and IIs.

MAS' Response

2.5.25 Managers who only manage physical asset CIS for AIs and IIs would be granted a class exemption from licensing. These managers would therefore not be subject to any custody requirements in relation to the physical asset CIS that they manage.

2.5.26 However, where these physical asset CIS are offered to retail investors, MAS would require the manager to comply with the custody requirements under the Securities and Futures Act. This would serve to protect the interests of retail investors.

2.6 Consequential amendments to the SFA

2.6.1 Respondents were generally concerned with implications on the consequential amendments to Part XIII of the SFA and had no objections to those in Parts II and IX of the SFA.

(a) Amendments to Part II (Markets) of the SFA

2.6.2 Respondents were agreeable to MAS' proposal to replace references to "futures contracts" with "derivatives contracts" throughout the SFA, as well as to move certain requirements relating to "derivatives contracts" to Regulations. One respondent indicated in relation to position limits that MAS should calibrate the position limit framework for futures contracts when extending this to derivative contracts. This is to avoid confusion as such derivative contracts are already being traded by investors, and any additional requirements may also have operational impact on industry.

MAS' Response

2.6.3 MAS has carefully considered the feedback received, and agrees with the need for a more flexible approach to the regulation of position limits and products offered by market operators. MAS will therefore replace the existing approval requirements with a notification framework. Under the new notification framework, market operators will have to continue to ensure that risks relating to the listing, delisting or trading of products

listed on their markets, are well-managed. Market operators will have to notify MAS of the measures that they have taken to manage the relevant risks, including the imposition of any position limits. MAS will set out the specific risk requirements in a Notice and consult on these requirements. The change to a notification regime will facilitate shorter time-to-market, and offer market operators better control in managing their product pipelines.

(b) Amendments to Part XIII (Offers of Investments) of the SFA

2.6.4 Respondents generally asked for clarification regarding the extension of the scope of the prospectus requirement to cash-settled securities-based derivatives contracts[9], and the prospectus exemptions that will be provided to exclude offers of contracts where the underlying securities are listed and where other disclosure requirements already apply to the offers (e.g. disclosure requirements imposed pursuant to the SFA on either the issuers or intermediaries) (the "Prospectus Exemption").

Scope of Part XIII

2.6.5 One respondent noted that the definition of "debentures" under section 2(1) does not apply to Part XIII of the SFA. However, Part XIII will no longer contain a definition of "debentures", and only defines "relevant debentures" as a debenture other than a promissory note having a face value of not less than $100,000 and having a maturity period of not more than 12 months. The respondent submitted that the definition of "debentures" in section 2(1) should now apply to Part XIII.

2.6.6 One respondent asked whether the Prospectus Exemption will cover all cash-settled securities-based derivatives contracts and all securities-based derivative contracts where the underlying securities are listed. Another respondent preferred to maintain the status quo which subject offers of derivatives to the prospectus requirements only if they are "units of shares or debentures". Some respondents asked whether a prospectus will be required to be issued by a bank to its clients for options, swaps and accumulators with securities underlying.

2.6.7 A few respondents were of the view that prospectus requirements should not apply to CFDs or other bilaterally traded securities-based derivatives contracts on the basis that they are OTC derivative trades that are not offers to the public.

[9] These include cash-settled structured warrants, extended settlement securities contracts and securities-based contracts for differences ("CFDs").

MAS' Response

2.6.8 The promissory note exclusion in the current definition of "securities" will be removed as highlighted in our Response to Feedback Received – Facilitating Securities-Based Crowdfunding published on 8 June 2016. All promissory notes will then be subject to the prospectus requirement. Therefore, the term "relevant debenture" will be replaced by "debentures" as defined in section 2(1) of the SFA and the term "investments"[10] will be replaced by references to "securities" and "securities-based derivative contracts" as defined in section 2(1) of the SFA.

2.6.9 Under the existing Part XIII of the SFA, an offer of an option, swap or accumulator with securities underlying is already subject to the prospectus requirement if it confers any right or interest whether legal or equitable in shares, debentures or units in a business trust[11]. Following the proposed amendments to Part XIII, an offer of an option, swap or accumulator with securities underlying, and that are cash-settled only, will be caught but will be eligible for the Prospectus Exemption if the requisite conditions are fulfilled.

2.6.10 Similarly, while offers of securities-based OTC derivatives such as CFDs will fall within the scope of Part XIII following the proposed amendments, they will still be eligible for the Prospectus Exemption if they satisfy the requisite conditions.

2.6.11 As per the existing definition of an offer set out in Part XIII, an offer is made by a person if he makes an offer to another person in Singapore or invites another person in Singapore to make an offer. Offers of bilateral contracts that fall within this scope are therefore subject to Part XIII and would require prospectuses, subject to any available exemptions, e.g. small offers or private placement exemptions. To utilise such exemptions, the offeror has to fulfil the requisite conditions, such as restrictions on advertising. There is no change in the scope of Part XIII in this regard.

Exemptions from Prospectus Requirements

2.6.12 A respondent queried whether the Prospectus Exemption signified a change from the current position under section 273 of the SFA where it appears that covered or structured warrants would require a prospectus if offered generally unless the warrant itself is listed or to be listed. Another respondent sought clarification on the disclosure requirements necessary to qualify for this exemption.

[10] The proposed term "investments" had comprised "securities", "securities-based derivative contracts" and certain promissory notes not excluded by the current definition of "debentures" in section 239(1) of the SFA.

[11] This is where the instrument is a unit of shares or debentures or a derivative of units in a business trust.

MAS' Response

2.6.13 An offer of physically-settled securities-based derivatives contracts, including structured warrants, will continue to be exempted only if the warrant itself is listed or to be listed on an approved exchange. As for securities-based derivative contracts such as CFDs and structured warrants that are cash-settled, the new Prospectus Exemption will apply to an offer of such contracts if the underlying securities are listed on any exchange, and either:

(i) the cash-settled securities-based derivative contracts are not listed but the offer is subject to risk disclosure requirements imposed pursuant to the SFA on either the issuer or the intermediary, as set out in paragraph 3.5 to 3.9 of the Consultation Paper on Regulatory Framework for Intermediaries Dealing in OTC Derivative Contracts, Execution-related Advice, and Marketing of Collective Investment Scheme in June 2015[12]; or

(ii) the cash-settled securities-based derivatives contracts are to be listed on an approved exchange.

2.6.14 Separately, MAS has considered the range of prospectus exemptions currently available, and intends to introduce a new power to grant exemptions under section 277 of the SFA. This will allow MAS to grant an exemption from the prospectus requirement under Part XIII of the SFA for an offer of securities by a subsidiary[13] of a listed entity, where:

(i) an offer information statement ("OIS") is issued in lieu of the prospectus;

(ii) the payment obligations under the securities are fully guaranteed, unconditionally and irrevocably, by the listed entity; and

(iii) MAS is satisfied that it would not be prejudicial to investors if a prospectus is dispensed with.

2.6.15 This new power will extend the scope of the exemption in the current section 277 of the SFA to enable not only listed entities, but their subsidiaries to use an OIS instead of a prospectus for offers of securities where appropriate.

[12] MAS will be responding to this consultation in due course.

[13] Where (i) Corporation A controls the composition of the board of directors of Corporation B; (ii) Corporation A controls more than half the voting power of Corporation B; or (iii) Corporation B is a subsidiary of any corporation which is Corporation A's subsidiary, Corporation B will be deemed to be a subsidiary of Corporation A.

3 Part B: Transfer of regulation of commodity derivatives from the CTA to the SFA

3.1 Respondents were generally supportive of IE Singapore and MAS' proposal to transfer the regulatory oversight of commodity derivatives under the Commodity Trading Act (Cap. 48A) ("CTA") to the SFA. Some respondents sought clarifications on the licensing exemptions under the CTA for bona fide spot commodity traders and those under the SFA for persons dealing in OTC commodity derivatives. There were also queries on the transitional arrangements for persons licensed under the CTA; these arrangements will be proposed via Regulations and will be published for comments at a later date.

3.2 Licensing exemptions under the SFA for persons dealing in OTC commodity derivatives

3.2.1 Respondents were supportive of MAS and IE Singapore's proposal to migrate to the SFA the licensing exemptions under the CTA for persons which deal in OTC commodity derivatives only with accredited investors ("AIs"), and persons which are approved as a "Global Trading Company" (within the meaning of the Income Tax Act (Cap. 134)) in respect of their activities in dealing in OTC commodity derivatives.

3.2.2 Several respondents asked if a person who intends to rely on the licensing exemption for persons dealing in OTC commodity derivatives with AIs will be required to independently verify the AI-eligibility of their counterparties. Another group of respondents suggested the licensing exemption for persons dealing in OTC commodity derivatives with AIs or Institutional Investors "IIs" should be broadened to include EIs, given that such investors are likely to have a high degree of expertise even if they do not qualify as AIs or IIs.

3.2.3 A few respondents requested that MAS replicate the relevant licensing exemptions for persons advising on OTC commodity derivatives under the CTA in the FAA.

MAS' Response

3.2.4 As set out in Part III of MAS' Response to the Consultation on Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets issued on 22 September 2015, MAS will expand the scope of AIs to include entities which are wholly-owned by AIs. MAS had also clarified that entities that wish to rely on regulatory exemptions when dealing with AIs are ultimately responsible for determining whether their customers fulfil the AI-eligibility criteria. Such entities should obtain independent documentary proof to ascertain a customer's AI-eligibility. A self-declaration by a customer does not constitute independent documentary proof.

3.2.5 MAS agrees with the suggestion to broaden the licensing exemption for persons dealing in OTC commodity derivatives with AIs or IIs to include EIs, as they are generally more sophisticated and experienced in dealing in OTC commodity derivatives.

3.2.6 Consistent with the licensing exemption provided under the SFA, MAS will also replicate the relevant licensing exemption for persons advising on OTC commodity derivatives[14] under the CTA in the FAA.

3.3 Licensing exemptions under the CTA for bona fide spot commodity traders

3.3.1 Several respondents suggested further amendments to the CTA so that bona fide traders carrying out legitimate spot commodity trading activity would continue to be exempted from the scope of licensing (in line with the original intention of the CTA), and any potential overlap between the CTA and Securities and Futures Act (Cap. 289) ("SFA") are minimised.

IE Singapore's Response

3.3.2 IE Singapore will conduct a separate review of the licensing exemptions in the CTA. Any amendments to the Schedule of the CTA will be carried out separately after the review.

4 Part C: Other amendments to the SFA

4.1 Feedback generally focused on the new Part VIIA (Short Selling) and on amendments to the criteria for recognising foreign CIS, which are elaborated on below. Other comments related to the proposed amendments to Part XII of the SFA. With respect to these, MAS has provided its response in the Response to the MAS consultation on Proposed Amendments to the Securities and Futures Act (Part XII) issued on 24 August 2015, and has on 7 November 2016, published an additional Response to the MAS consultation on Proposed Amendments to the Securities and Futures Act (Part XII & Section 324) in relation to the draft legislative amendments.

4.2 New Part VIIA (Short selling) of the SFA

4.2.1 Respondents generally supported MAS' proposal to introduce a short selling reporting regime, including the reporting of short positions and disclosure of short sell orders. Some respondents sought clarity on the determination of "interest" for the

[14] Known as "commodity trading adviser" under the CTA.

purposes of Part VIIA. A few respondents requested more details on the scope of products that will be caught for short position reporting, in particular, whether OTC derivatives are included, and how short positions should be aggregated across affiliated entities.

MAS' Response

4.2.2 As indicated in our Response to the MAS-SGX Joint Consultation on the Review of Securities Market Structure and Practices (the "Joint Consultation"), derivatives on listed shares will be excluded from the scope of reporting when reporting requirements are first implemented. The scope of products will be prescribed in Regulations, which will be consulted on at a later stage. MAS will also provide guidance on how these positions can be aggregated for reporting.

(a) Marking of short sell orders

4.2.3 Some respondents sought clarity on the obligations in situations where an end investor makes the short sell order via a third party, i.e. whether the onus to mark the sell order as short would lie with the third party or the end investor.

MAS' Response

4.2.4 The obligation to mark short sell orders will lie with the investor, who must either mark them to the exchange or to another person (B), who places the order on the exchange on his behalf. In the latter scenario, B's obligation is limited to passing the information it has received from the investor on to the exchange. MAS has made further amendments to the SFA provisions to clarify this.

(b) Reporting of net short position value

4.2.5 A number of respondents had sought confirmation on the thresholds for reporting and the calculation of short positions. Some respondents also sought details on the operational aspect of reporting, such as the manner of reporting and the nature of information to be reported. It was also suggested that MAS provide the necessary reporting infrastructure for end investors to report their net positions to MAS directly.

MAS' Response

4.2.6 As indicated in our response to the Joint Consultation, the reporting thresholds will be the lower of 0.05% or $1million of issued shares of a listed entity, and reporting will be on a weekly basis. MAS will consult on Regulations that set out the details for calculation and reporting of short positions.

4.2.7 MAS has been developing a Short Position Reporting System (SPRS) for position holders to submit their reports and will provide details on the SPRS at a later stage.

4.3 Amendment to the criteria for recognising foreign CIS

4.3.1 Generally, respondents did not object to the proposal to provide MAS with the flexibility to take into account factors other than the laws and practices under which a foreign CIS is governed, when considering whether to recognise the foreign CIS. Two respondents commented that if the pool of recognised CIS were to be expanded beyond CIS that are constituted in certain European Union member states, the recognition should be reciprocal, i.e. the jurisdiction in which the recognised foreign CIS is constituted should recognise Singapore CIS.

4.3.2 Respondents also sought guidance on what the additional criteria for recognising a foreign CIS under the revised section 287(2) and (3) would entail. One respondent queried whether foreign CIS will no longer need to strictly comply with the other existing mandatory criteria under the original section 287(2).

MAS' Response

4.3.3 There is no change to the policy intent that the level of investor protection in recognised CIS should be equivalent to the protection provided under the SFA for comparable authorised funds. The amendments provide MAS with the discretion to recognise a foreign CIS that is constituted in a jurisdiction whose laws and practices fall short of the existing standards required for equivalent protection, but which may be able to adequately address the areas of non-equivalence through other legally binding arrangements. These may include a fund's constituent documents, investment policy and independent oversight body. The amendments would also bring MAS in line with the fund approval regime of other leading jurisdictions. Where appropriate, MAS may seek reciprocal recognition for Singapore CIS.

4.3.4 The other existing mandatory criteria and conditions for recognition will continue to apply to all foreign CIS. MAS will revise the proposed amendments to clarify this. As for the additional criteria to be considered under the new section 287(2)(b), these will be elaborated on by way of Regulations. MAS will be publishing the proposed Regulations for public consultation.

MONETARY AUTHORITY OF SINGAPORE

7 November 2016

Annex

LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON PROPOSED AMENDMENTS TO THE SECURITIES AND FUTURES ACT

1. Alternative Investment Management Association (AIMA)
2. Alberta Investment Management Corporation (AIMCo)
3. BGC Partners (Singapore) Limited
4. BNP Paribas Trust Services Singapore Limited
5. Cargill Asia Pacific Holdings Pte Limited
6. Citibank N.A., Singapore Branch
7. Cleartrade Exchange Pte Ltd
8. Clifford Chance Pte. Ltd.
9. CME Group Inc.
10. Commerzbank AG
11. Credit Agricole Corporate & Investment Bank
12. DQL Energy Ltd.
13. Futures Industry Association (FIA) and Asia Securities Industry and Financial Markets Association (ASIFMA)
14. Freight Investor Services Pte Ltd
15. Ginga Global Markets Pte Ltd
16. Gunvor Group Ltd
17. Hans Tjio
18. ICAP
19. IG Asia Pte Ltd.
20. Investment Management Association of Singapore (IMAS)

21. ING Asia

22. International Swaps and Derivatives Association, Inc. (ISDA)

23. KGI Ong Capital Pte Ltd.

24. KPMG Services Pte Ltd.

25. Marex Spectron Asia Pte Ltd.

26. Phillip Securities Pte Ltd.

27. RHTLaw TaylorWessing LLP

28. Samuel Yap

29. Sidley Austin LLP

30. Singapore Money Brokers Association

31. Skandinaviska Enskilda Banken AB (Publ), Singapore Branch

32. Sumitomo Mitsui Banking Corporation, Singapore Branch

33. Tan Peng Chin LLC

34. The Bank of East Asia, Singapore Branch

35. The Bank of Tokyo-Mitsubishi UFJ, Ltd.

36. Tradition Singapore Pte Ltd

37. TFS-ICAP Ltd.

38. Tullet Prebon Singapore Ltd.

39. Vitol Group Ltd.

40. WongPartnership LLP

41. Yoong Weng Cheong

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

Monetary Authority of Singapore