

RESPONSE TO FEEDBACK RECEIVED

December 2016

**Response to Feedback Received –
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 June 2016, MAS issued a consultation paper on the proposed legislative amendments under the Financial Advisers Regulations (“FAR”) to effect the exemption of execution-related advice (“ERA”) in respect of listed Excluded Investment Products (“EIPs”) from the Financial Advisers Act (“FAA”), and the consequential amendments to the Notice on Recommendations on Investment Products [Notice No. FAA-N16].

1.2 The consultation ended on 28 July 2016, and MAS would like to thank all respondents for their comments. The list of respondents is set out in Annex A and the full submissions are provided in Annex B¹.

1.3 MAS has carefully considered the comments received, and has incorporated them where it has agreed with the feedback. Comments that are of wider interest, together with MAS’ responses, are set out in sections 2 to 4. The finalised regulations are expected to take effect in Q1 2017.

¹ Some names and submissions have been omitted based on a request for confidentiality by respondents.

2 Clarification of Execution-Related Advice¹

2.1 A few respondents sought clarification of what would constitute financial advice for the purpose of ERA. One respondent was of the view that expressions of opinion based on one's personal attitude, belief, reading of the situation, hypothesis and judgment, should not tantamount to ERA. Another respondent asked whether trading representatives ("TRs") would still be considered as providing ERA where the financial advice did not result in any trades being executed.

2.2 Two respondents asked whether the dissemination of research analyses and reports by TRs would be deemed as providing financial advice. Related to this, one respondent asked whether dealers and TRs would be able to disseminate research reports if "issuing or promulgating any research analysis or research report" on listed EIPs was carved out from the definition of ERA. In this regard, the respondent also suggested that guiding notes or principles be set out for TRs who provide ERA through publication or writing.

2.3 One respondent asked whether an existing TR, who is currently appointed as a representative under the FAA, may continue to be appointed for the flexibility to provide financial advisory services beyond ERA on listed EIPs.

¹ "ERA" means advice which is provided to a client by a dealer or a TR 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 TR acting on behalf of a dealer, as the case may be; and
- (c) where no discrete fee is charged by the dealer or TR, as the case may be, for the advice rendered;

"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.

MAS' Response

2.4 When a TR makes a recommendation to his or her client, for example, on whether to buy or sell an investment product, it would constitute financial advice for the purpose of ERA even though the trade may not be executed subsequently.

2.5 Where TRs provide ERA on listed EIPs to clients through any publication or writing based on their own research and assessment, the TRs would be required to include the rationale for their recommendations in those reports. On the other hand, the mere dissemination by TRs of research analyses and reports issued or promulgated by a third party (as opposed to providing the TRs' own research and assessment) would not be deemed as provision of financial advice, and on its own is not a regulated activity under the FAA.

2.6 TRs who wish to provide financial advisory services beyond the scope of ERA in respect of listed EIPs are still required to be appointed as representatives under the FAA. However, in their provision of ERA in respect of listed EIPs, these TRs will be exempted from the requirements under the FAA.

3 Provision of Rationale for ERA on Listed EIPs

3.1 MAS had proposed to exempt the provision of ERA in respect of listed EIPs from the FAA, subject to the following safeguards:

- (a) Prior to account opening or provision of ERA, the dealer shall provide the client with a prominent disclosure in writing that the ERA does not take into account the client's investment objectives, financial situation and particular needs, and highlight to the client that it is his responsibility to ensure the suitability of the product recommended;
- (b) The dealer shall state the rationale for the ERA provided to the client; and
- (c) The dealer must maintain a register of TRs who provide ERA on listed EIPs.

3.2 A few respondents sought clarification and requested further guidance on the types of rationale considered acceptable. Another respondent commented that such rationale could be subjective, and ultimately, clients must make their own judgment before making any investment decision based on the ERA provided. One respondent suggested that the rationale be provided only upon a client's request.

3.3 One respondent asked whether the provision of prominent disclosure in writing to clients mentioned in paragraph 3.1 (a) could be in electronic form, or via publication of

a notice in major newspapers and the company's website. Another respondent sought clarification on whether such disclosure was required for existing clients.

3.4 On the frequency of provision of the written disclosure, one respondent sought clarification on whether such disclosure was required every time ERA on a listed EIP was provided to a client. The respondent also suggested that dealers, as a priority, provide the disclosure to all active clients and defer this for clients with dormant accounts as such clients were unable to trade unless they reactivated their accounts.

3.5 One respondent suggested that the proposed register be maintained for TRs who only provide ERA in respect of listed EIPs and are not appointed as representatives under the FAA. This is because TRs who provide ERA beyond listed EIPs are likely to also provide ERA on listed EIPs. As these TRs are already appointed as representatives under the FAA, there is no need to maintain a separate register for them.

MAS' Response

3.6 MAS expects TRs to be able to explain the basis for the ERA they provide to their clients. In stating the rationale for the ERA, TRs would need to explain to their clients why they have made those recommendations. This could be based on technical or fundamental analysis conducted by the TRs, reports issued by other research analysts, or market developments and events².

3.7 To allow clients to make informed trading decisions, TRs should state the rationale for the ERA each time they provide advice to clients, rather than only upon request by the client.

3.8 The written disclosure should be provided to both new and existing clients. For new clients, such disclosure only needs to be provided at the point of account opening. For existing clients, a one-time disclosure will need to be provided before the TR commences provision of ERA on any listed EIP when the legislative amendments take effect. MAS will provide greater clarity in the regulations to reflect this.

² For example, a TR may recommend a client to buy shares in Company A as the price/earnings ratio of Company A is attractive and the sector has a positive economic outlook. In providing ERA to a client, the TR would have to state the rationale for his recommendation to buy shares in Company A (i.e. attractive price/earnings ratio and outlook of the company).

3.9 For dormant accounts, dealers should ensure that such clients are provided with the written disclosure upon commencement of the provision of ERA to these clients or upon reactivation of their dormant accounts, whichever is earlier.

3.10 MAS will not be prescribing the mode through which dealers can provide the written disclosure to their clients. Dealers already utilise various modes of written communication with clients, for instance, on matters relating to their accounts. To ensure that the disclosure reaches all clients, the dealer should adopt an appropriate mode of communication, which is more targeted (such as via a letter to the client rather than through a general publication or the mass media), and take into consideration the client's profile and typical communication channel between the dealer and the client. For example, it may not be appropriate for a dealer to provide the written disclosure via electronic mail to a client who does not have an internet trading account and who typically conveys his orders to the TR via telephone.

3.11 MAS agrees with the feedback on the maintenance of the register of TRs, and will revise the regulations accordingly.

4 Dealers' Oversight of TRs

4.1 Under the proposed regulations, the dealer must put in place measures to ensure that each time its TRs provide ERA in respect of listed EIPs to clients, the TRs must provide the rationale for such advice.

4.2 One respondent asked what would be deemed adequate for the purpose of complying with this requirement. The respondent commented that it may not be feasible to monitor and keep a log on ERA in the case of TRs who operate off-premises. Instead, the respondent suggested that it would suffice for dealers to take specific measures such as briefing their TRs on providing the rationale for their ERA. A few respondents also sought clarification on MAS' expectations on record-keeping.

MAS' Response

4.3 Currently, dealers are already required to implement measures, including proper record keeping, to ensure adequate oversight and controls over their operations, in a manner that is commensurate with the nature, scale and complexity of their businesses. In this regard, it is not MAS' intention to prescribe specific measures that dealers should put in place for the purpose of ERA. Dealers could consider leveraging on their existing record-keeping tools and procedures and extend it to ERA. In particular, MAS notes that dealers have instituted telephone recording and trade order book-keeping to maintain records of client orders and bases of recommendations made by TRs to their clients. This

could similarly be applied to documentation of the rationale for the ERA provided to clients. For TRs who operate off-premises, they could similarly document the rationale for their ERA provided to customers using existing record-keeping tools.

MONETARY AUTHORITY OF SINGAPORE

30 December 2016

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON
PROPOSED LEGISLATIVE AMENDMENTS TO EXEMPT EXECUTION-RELATED
ADVICE IN RESPECT OF EXCLUDED INVESTMENT PRODUCTS FROM THE
FINANCIAL ADVISERS ACT**

1. Securities Association of Singapore
2. The Society of Remisiers (Singapore)
3. United Overseas Bank Limited

Note: This list only includes the names of respondents who did not request that their identity be kept confidential.

**FULL SUBMISSIONS FROM RESPONDENTS TO THE CONSULTATION PAPER
 ON PROPOSED LEGISLATIVE AMENDMENTS TO EXEMPT EXECUTION-
 RELATED ADVICE IN RESPECT OF EXCLUDED INVESTMENT PRODUCTS
 FROM THE FINANCIAL ADVISERS ACT**

S/N	Respondent	Full Responses from Respondent
1	Securities Association of Singapore (SAS)	<p>2. – (1) execution activities” means – (b) for the purpose 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;</p> <p>SAS: In addition to dealing in securities and futures contracts, members would like MAS to consider including Foreign Exchange and Leveraged FX contracts which are in the current definition.</p> <p>2 – (1) “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;</p> <p>SAS: Members would like to seek clarification on dealers or trading representatives acting on behalf of a dealer 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). They needed certainty that if “issuing or promulgating any research analysis or research report” on listed Excluded Investment Products are carved out, dealers or trading representatives</p>

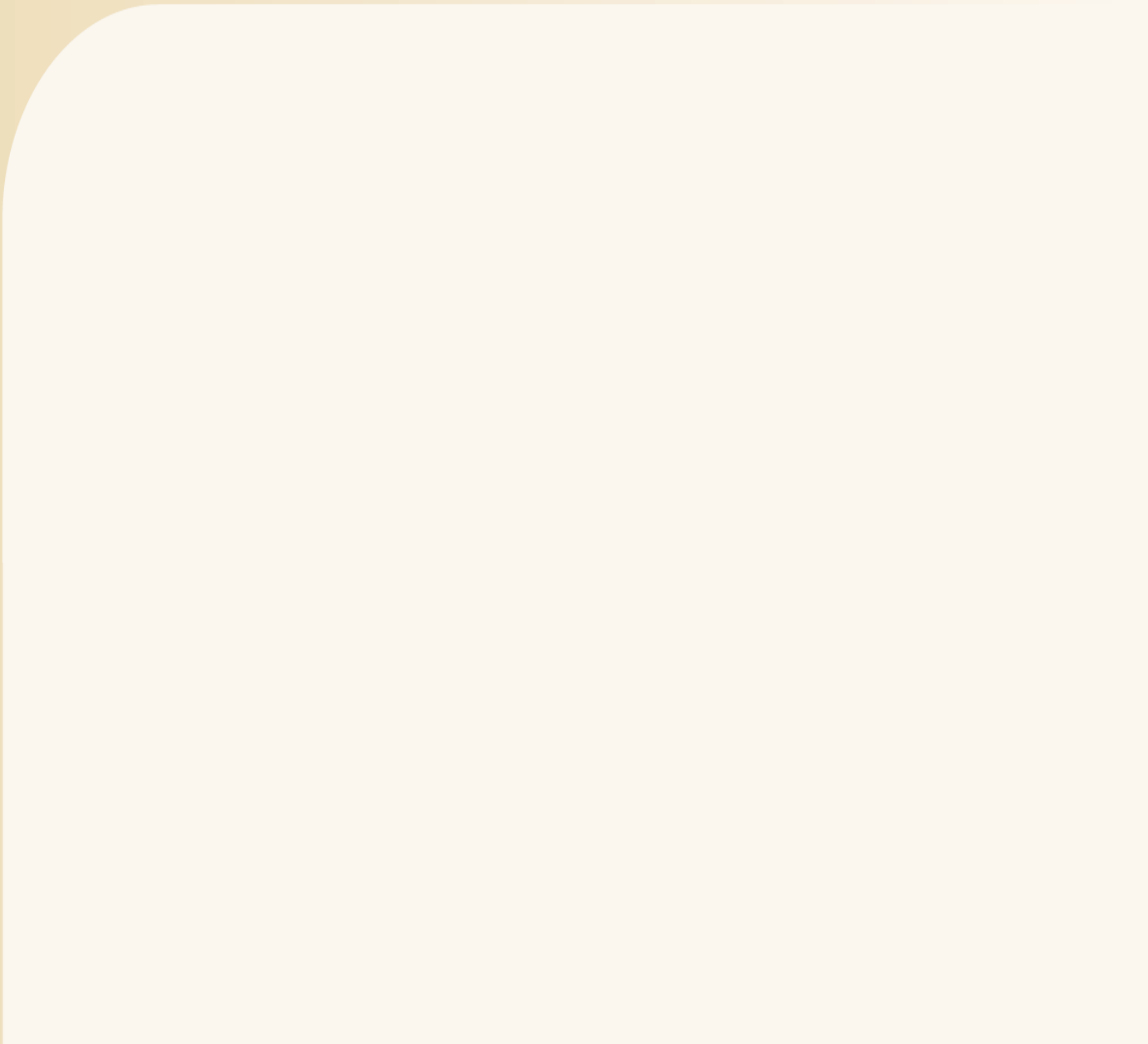
		<p>are able to disseminate research reports. In addition, it would be helpful if MAS could provide guiding notes/principles on the do's and don'ts on the content of the "publication or writing" for which a trading representative or dealer may provide execution-related advice.</p> <p>30. – (2)(a) prior 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 the otherwise) must provide the client a prominent disclosure in writing which contains a statement or the information to the effect that-</p> <p>SAS: The Securities Association of Singapore shall provide a standard disclosure to be used by members. For the purpose of notifying existing clients, members wish to seek MAS confirmation that such disclosure can be in <u>electronic form</u> as this would be more feasible as compared with snail mailing. By providing clients the prominent disclosure in writing through mass mailing has some setbacks. There may be rejected or bounced mail especially for dormant accounts. Hence members prefer to consider a one-time joint advertisement in the major newspapers in Singapore (Straits Times and Lian He Zaobao). The advertisement and members' announcements can also be displayed on respective members' websites to serve as "prominent disclosure in writing" to their clients.</p> <p>Other possible avenues to notify clients would be:</p> <ul style="list-style-type: none"> • Display at members' websites • Send EDMs to customers • Include in T&Cs in Account Opening Form • Display on SGX MyGateway and/or • Monthly CDP statements and/or contract notes (<i>pending affirmation and support from SGX</i>). <p>If mass mailing is indeed absolutely necessary, members prefer that <u>only active accountholders</u> be communicated. After all, dormant accounts do not allow the account holders to trade as these are "frozen". For avoidance of doubt, members would also like to seek MAS confirmation that the disclosure is not required every time execution-related advice is given to a client.</p>
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		<p>30. – (2)(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;</p> <p>SAS: What is deemed as “acceptable” rationale to the Authority, dealers and customers may differ, and rationale is difficult to qualify or quantify. It would be helpful if the authority could provide guiding notes/principles and examples of <u>“acceptable and not acceptable rationale”</u> to the industry. A suggestion is to incorporate such guiding notes/principles in applicable CMFAS exam modules which cover execution-related advice.</p> <p>“The dealer must put in place measures to ensure that each time its trading representative provides execution-related advice in respect of any Listed EIPs to a client ...” elicit uncertainty among members. The word “ensure” is too vague in any respect and by what measurement is deemed as sufficient to satisfy all parties on the provision of the rationale for such advice. With such ambiguity, the collective view is that there may be constant breaches. With mobile trading, it may not be that feasible to monitor and keep the log on the provision of rationale. If the provision of “acceptable” rationale is required, it should be incidental upon client’s request. As deliberated above, members proffered that this paragraph <u>be removed in its entirety</u>. However measures can be put in place for member firms to appropriately discharge their responsibility and fulfil this requirement.</p> <ul style="list-style-type: none"> • For example, member firms shall conduct training/briefing and/or give explanation and/or reminders to their dealers and trading representatives on giving trading advice to their customers. • Examples of <u>acceptable rationale</u> that members wanted from MAS as mentioned above could be used during training and/or dialogue sessions with dealers and trading representatives. • Another measure is to notify clients of the availability of rationale on any execution-related
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		<p>advice on Listed EIPs rendered by their trading representatives upon request. Such notification could be incorporated in the disclosure statement required under Para 30.(2)(a).</p> <p>30. – (2)(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):</p> <ul style="list-style-type: none"> (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. <p>SAS: Members are of the view that the proposed establishment and maintenance of such a register containing details of each trading representative who provides execution-related advice is redundant as this regulation applies only to CMS licensee representatives, whereby the Representative Notification Framework (“RNF”) is already in place. It is on this assumption that all trading representatives are able to give execution-related advice unless the trading representative chooses not to do so. Members are of the view that a smaller register be kept on dealers and trading representatives who are not registered as exempt-FA representative but choose to offer execution-related advice.</p> <p>30A. – (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 rationale for such advice.</p> <p>SAS: Please refer to above comments in 30. – (2)(b).</p>
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2	The Society of Remisiers (Singapore)	<p>The Society of Remisiers (Singapore) welcomes the Consultation Paper on the Proposed Legislative Amendments to Exempt Execution-Related Advice (ERA) in respect of Listed Investment Products from the Financial Advisers Act and appreciates the invitation for our feedback and comments, which we are pleased to append below:-</p> <p><u>1) With regards to the definition of “execution-related advice” on page 5:</u></p> <p>We appreciate the clarity that ERA excludes forward(s) or reference(s) to analysis and reports by research houses. It would be complete if the definition also excludes forward(s) and reference(s) to analysis and reports by in-house research departments of broking firms and publications such as Business Times and the like.</p> <p>Expressions of opinion, based on one’s personal attitude, belief, reading of the situation, hypothesis and judgement etc., should not tantamount or qualify as an ERA.</p> <p><u>2) With regards to fees on page 6:</u></p> <p>We support the prerequisite that such advice should be rendered free of any discrete fees to qualify for this exemption under this Proposed Legislative Amendment.</p> <p>Such fees shall be distinguished from brokerage incurred.</p> <p><u>3) With regards to the “conditions” under (2) (a) (i) (ii) on page 7:</u></p> <p>For clarity to remove any misunderstanding and to prevent any disputes that may arise, we support the need to serve notice in writing that “any ERA provided ... does not take into account any of the client’s investment objectives, financial situation or particular needs and it is the responsibility of the client to ensure the suitability of the Listed Excluded Investment Product” to new clients.</p> <p>However, the proposal has left out a greater and more significant group, our existing client. Whilst we are open to broking firms serving similar notices to existing clients, for</p>
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		<p>practicality and for faster and wider reach, may we propose that MAS or SGX have a similar irrefutable and binding notice published in our Main Stream Media for the various languages, for all and sundry.</p> <p>4) <u>With regards to para 30A (2) on page 8:</u></p> <p>Whilst the proposal for trading representative to provide the rationale for such advice is sound, the authorities and clients need to recognize that such rationale is also subjective. It cannot translate into a guarantee of promise. This subjectiveness is inevitable as the investments are subject to both macro and micro events that are both fluid, ever changing (sometimes without notice) and do have irrational bearing on the investment per se and its time-line. Moreover, the basis a fundamentalist and a chartist use to arrive at their advice differs. Even among research houses, they often disagree on their views and recommendations for the same sets of information. Similarly, any advice given by trading representative is given on a "best effort" basis and the expected outcome may not necessarily pan out or happen within the time frame in mind.</p> <p>Ultimately, the client must make his own judgement before embarking on the investment or divestment as such.</p>
3	United Overseas Bank Limited	<p>Question 2: As quoted:</p> <p>“30(2)(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;”</p> <p>In view of the above, we would like to seek MAS’ clarification on what kind of rationale is to be provided for execution-related advice that is incidental to execution. Kindly provide an example.</p>



Monetary Authority of Singapore