

RESPONSE TO FEEDBACK RECEIVED

December 2015

**Response to feedback received
(Part I) – Policy Consultation on
Regulatory Framework for
Intermediaries Dealing in OTC
Derivative Contracts, Execution-
Related Advice, and Marketing of
Collective Investment Scheme**

MAS

Monetary Authority of Singapore

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1 Preface

1.1 On 3 June 2015, MAS issued a consultation paper on the proposed regulatory framework for intermediaries dealing in OTC derivative contracts, execution-related advice¹ (“ERA”) and marketing of collective investment schemes (“CIS”).

1.2 The consultation ended on 3 July 2015, and MAS would like to thank all respondents for their comments.

1.3 This set of responses addresses feedback received on the proposals to refine the rules governing ERA, as set out under section 8 of the consultation paper. MAS has carefully considered the feedback received. The list of respondents who submitted their feedback on these proposals is set out in Annex A. Comments that are of wider interest, together with MAS’ responses are set out below.

1.4 MAS will respond separately to feedback on proposals relating to the proposed regulatory framework for intermediaries dealing in OTC derivative contracts and marketing of CIS in due course.

¹ “Execution-related advice” is defined under the Guidelines on Conduct of Business for Execution-Related Advice [Guideline No. FAA-G08] (“FAA-G08”) as advice provided by persons who are exempt from holding a financial adviser’s licence under section 23(1)(a), (b), (d), or (e) of the Financial Advisers Act (“FAA”) and their representatives which is solely incidental to the execution activities of such person and where no discrete fee is charged for the advice rendered.

“Execution activities” refer to any or all of the following activities as defined in section 2(1) of the Securities and Futures Act:

- (a) dealing in securities (other than collective investment schemes) quoted on a securities exchange, overseas securities exchange or recognised trading system provider;
- (b) trading in futures contracts;
- (c) foreign exchange trading; and
- (d) leveraged foreign exchange trading.

2 Exemption of ERA in respect of Listed Excluded Investment Products² (“EIPs”) from the FAA

2.1 Respondents were generally supportive of the proposed exemption for listed EIPs. A few respondents suggested expanding the scope of exemption to include ERA in respect of all listed products, including Specified Investment Products³ (“SIPs”). One respondent suggested applying the exemption to ERA in respect of unlisted SIPs. Respondents who suggested expanding the scope of ERA exemption were of the view that existing safeguards which require dealers to conduct Customer Account Review⁴ (“CAR”) and Customer Knowledge Assessment⁵ (“CKA”) were sufficient to ensure that customers who wish to trade in listed and unlisted SIPs have the requisite knowledge and experience to do so. They were also of the view that it would be operationally challenging for dealers⁶ to comply with the current ERA requirements for listed SIPs due to the time-sensitive nature of execution services for listed products in general. Nevertheless, the respondents noted that the proposed exemption for listed EIPs would already exempt most of the securities listed on the Singapore Exchange (“SGX”) and largely address their ERA-related concerns.

2.2 One respondent sought clarification on whether the proposed exemption included listed CIS such as Real Estate Investment Trusts (“REITs”) and Exchange-traded Funds (“ETFs”), as well as unlisted securities-based EIPs such as initial public offerings (“IPOs”), new placement shares and plain vanilla bonds.

² These refer to EIPs as defined in the Notice on Recommendations on Investment Products [Notice No. FAA-N16] (“FAA-N16”), which are listed for quotation or quoted on a securities exchange, overseas securities exchange or recognised market operator. They include listed collective investment schemes such as exchange-traded funds and REITs that meet the EIP definition.

³ SIP refers to any investment product other than an EIP.

⁴ CAR is defined in the Notice on the Sale of Investment Products [Notice No. SFA 04-N12] (“SFA 04-N12”) as a review of a customer’s knowledge and experience in derivatives for the purpose of opening an account for the customer to trade in an SIP which is listed for quotation or quoted on a securities market or a futures market.

⁵ CKA is defined in SFA 04-N12 as a review of a customer’s knowledge and experience in an SIP which is neither listed for quotation nor quoted on a securities market or a futures market.

⁶ “Dealers” is defined under FAA-G08 to mean persons exempt from holding a financial adviser’s licence under section 23(1) (a), (b), (c), (d) or (e) of the FAA and their representatives in respect of their carrying on the business of providing ERA.

MAS' Response

2.3 MAS considers it important that the sale of complex investment products, or SIPs, be accompanied by an assessment of whether the product is suitable for the customer based on his investment objectives, financial situation and particular needs. Under the CAR and CKA regimes, there are requirements for dealers to provide advice to customers trading in listed or unlisted SIPs, even where customers are assessed to have the relevant experience or knowledge to trade SIPs. In particular, under the CAR regime, dealers are required to include a statement in their account opening forms that a customer can, at any time, request for advice concerning listed SIPs⁷. Similarly, dealers are also required to offer to provide advice concerning unlisted SIPs to the customer, notwithstanding a positive outcome of the CKA⁸. As such, extending the ERA exemption to cover SIPs would undermine the CAR and CKA regimes.

2.4 MAS has further engaged respondents on their proposal to extend the ERA exemption to SIPs. Respondents acknowledged the higher risks associated with SIPs and agreed that the proposal to exempt listed EIPs from the FAA requirements would be a significant step in addressing their concerns as listed EIPs account for about 98% of the listed securities traded on SGX. MAS will therefore proceed to exempt ERA in respect of listed EIPs from the FAA. We will assess the need to conduct a subsequent review of the ERA regime at a later stage.

2.5 The exemption will cover ERA on listed CIS such as REITs and ETFs that meet the EIP definition. MAS will also exempt unlisted EIPs such as IPOs, new placement shares, and plain vanilla bonds that have received regulatory approval for listing as these would be listed in due course.

⁷ Paragraph 10 of SFA 04-N12 states that "Regardless of the outcome of the Customer Account Review, a licensed person or an exempt financial institution who is also an exempt financial adviser shall include a statement in its account opening form that a customer can, at any time, request for advice concerning a Specified Investment Product. Upon such request, the licensed person or the exempt financial institution shall provide such advice to the customer concerned".

⁸ Paragraph 20 of FAA-N16 states that "Notwithstanding a positive outcome of the Customer Knowledge Assessment, the financial adviser shall offer to provide advice concerning the unlisted Specified Investment Product to the client."

3 Proposed Safeguards for Provision of ERA in respect of Listed EIPs

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

- (a) The dealer shall provide the customer with a written warning at account opening that the ERA does not take into account the customer's investment objectives, financial situation and particular needs, and highlight to the customer that it is his responsibility to ensure the suitability of the product recommended; and
- (b) The dealer shall state the rationale for the ERA provided to the customer.

3.2 One respondent commented that the proposed safeguards do not appear to offer significant operational relief for the industry as the existing ERA requirements already allow brokers to provide advice to customers without taking into consideration their personalised needs and financial situation, provided a warning is furnished to the customer. The respondent also sought clarification on what would be considered as rationale for the ERA provided to customers, as well as the extent of documentation required.

3.3 Another respondent suggested that the provision of a written warning to customers should not be limited to account opening as there may be other circumstances that warrant the provision of the written warning, for example, during the re-activation of a dormant account.

3.4 One respondent asked whether the proposed safeguards would apply to persons who are currently exempted from business conduct requirements under the FAA, for example, when financial advisory ("FA") services are provided to accredited investors, institutional investors, expert investors and overseas investors, or in the case of specialised units that provide FA services to high net worth individuals⁹.

⁹ Under the Guidelines on Exemption for Specialised Units Serving High Net Worth Individuals under Section 100(2) of the FAA [Guidelines No. FAA-G07], MAS may grant case-by-case exemption from sections 25, 27, 28 and 26 of the FAA in respect of any financial advisory service provided by a separate and distinct department, division, section or unit of a financial institution serving high net worth individuals.

MAS' Response

3.5 Currently, the provision of ERA is subject to section 27 of the FAA, which requires dealers to have a reasonable basis for the ERA provided to a customer, that takes into consideration the customer's investment objectives, financial situation and particular needs. Dealers are required to perform detailed financial needs analysis for their customers unless the customers do not wish to provide the requested information. In such cases, the dealer is required to document the decision of the customer, and provide a warning to the customer that the ERA given will not take into account his investment objectives, financial situation and particular needs, and that it is the customer's responsibility to ensure the suitability of the product recommended.

3.6 The proposed ERA rules will provide operational relief to the industry by only requiring dealers to provide a rationale for their recommendations and a written warning to customers to clarify that the ERA does not take into consideration the suitability of the product for customers. In stating the rationale for ERA, dealers would need to explain to their customers why they have made those recommendations, which could be based on the merits of the product (e.g. technical or fundamental analysis of a particular security) or its market performance. Such advice does not take into consideration the financial needs and personal situation of the customer, and is therefore less onerous than the current requirements.

3.7 MAS will not be prescribing the extent of documentation of the rationale for ERA provided to customers. However, it will be in the interest of dealers to maintain proper records, taking into account the nature of their businesses and the potential for customer disputes.

3.8 MAS would like to clarify that the proposed safeguard for dealers to provide customers with a written warning at account opening on provision of ERA does not preclude dealers from providing other forms of warning to customers under other circumstances as may be appropriate.

3.9 The safeguards will not apply to dealers who serve accredited investors, institutional investors, expert investors and overseas investors or if the ERA is provided by specialised units that provide FA services to high net worth individuals.

4 Applicability of FAA Requirements

4.1 One respondent inquired whether, with the exemption of the provision of ERA in respect of listed EIPs from the FAA, FAA-G08¹⁰ will still apply. Another respondent sought clarification on whether representatives will be required to comply with the current FAA requirements, including the examination requirements, if the representatives were to provide ERA on listed EIPs only. Another respondent also asked whether the Financial Advisory Industry Review (“FAIR”) recommendation¹¹ to restrict the non-FA activities of FA representatives would apply to representatives who only provide ERA in respect of listed EIPs.

MAS’ Response

4.2 When the proposed exemption comes into effect, FAA-G08 will continue to apply to the provision of ERA in respect of all other capital markets products other than listed EIPs¹². Under the exemption, a dealer who provides only ERA on listed EIPs need not be notified as an FA representative. Accordingly, he or she will not be subject to any of the FAA requirements, which include the Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers [Notice No. FAA-N13] as well as restrictions on the non-FA activities of FA representatives. However, for dealers who provide ERA on listed EIPs as well as other capital markets products, they will need to be notified as FA representatives and be subject to the applicable requirements under the FAA.

5 Implementation Plan

5.1 MAS targets to issue regulations to exempt dealers who provide ERA in respect of listed EIPs from the FAA, and make the necessary amendments to FAA-N16 and FAA-

¹⁰ FAA-G08 sets out standards to be maintained by dealers when they provide ERA, taking into account the business model and modus operandi of dealers which provide ERA.

¹¹ Under FAIR, FA firms are required to assess whether their FA representatives should be allowed to conduct non-FA activities, and ensure that these activities are not in conflict with the FA firm’s business, do not tarnish the image and reputation of the FA firm and the industry, and will not lead to a neglect of the representative’s FA role. In this regard, acting as a real estate salesperson, holding a moneylender’s licence or a junket promoter licence and marketing investments not regulated under the FAA have been identified as non-FA activities that do not satisfy those criteria. Hence, FA representatives are prohibited from conducting such non-FA activities while they are notified under the FAA.

¹² Reference to listed EIPs include unlisted EIPs that have received regulatory approval for listing and will be listed in due course.

G08, by 1H 2016. We will be issuing a public consultation on the draft legislative amendments in due course.

5.2 In the interim, as the restrictions on non-FA activities of FA representatives under FAIR will take effect on 1 January 2016, dealers who provide only ERA on listed EIPs and wish to be exempted from these restrictions may apply in writing through their principal companies to MAS for exemption from these restrictions. The application should state the non-FA activity that the dealer will be engaging in, and be accompanied by a confirmation from the principal company that the dealer will only be providing ERA on listed EIPs.

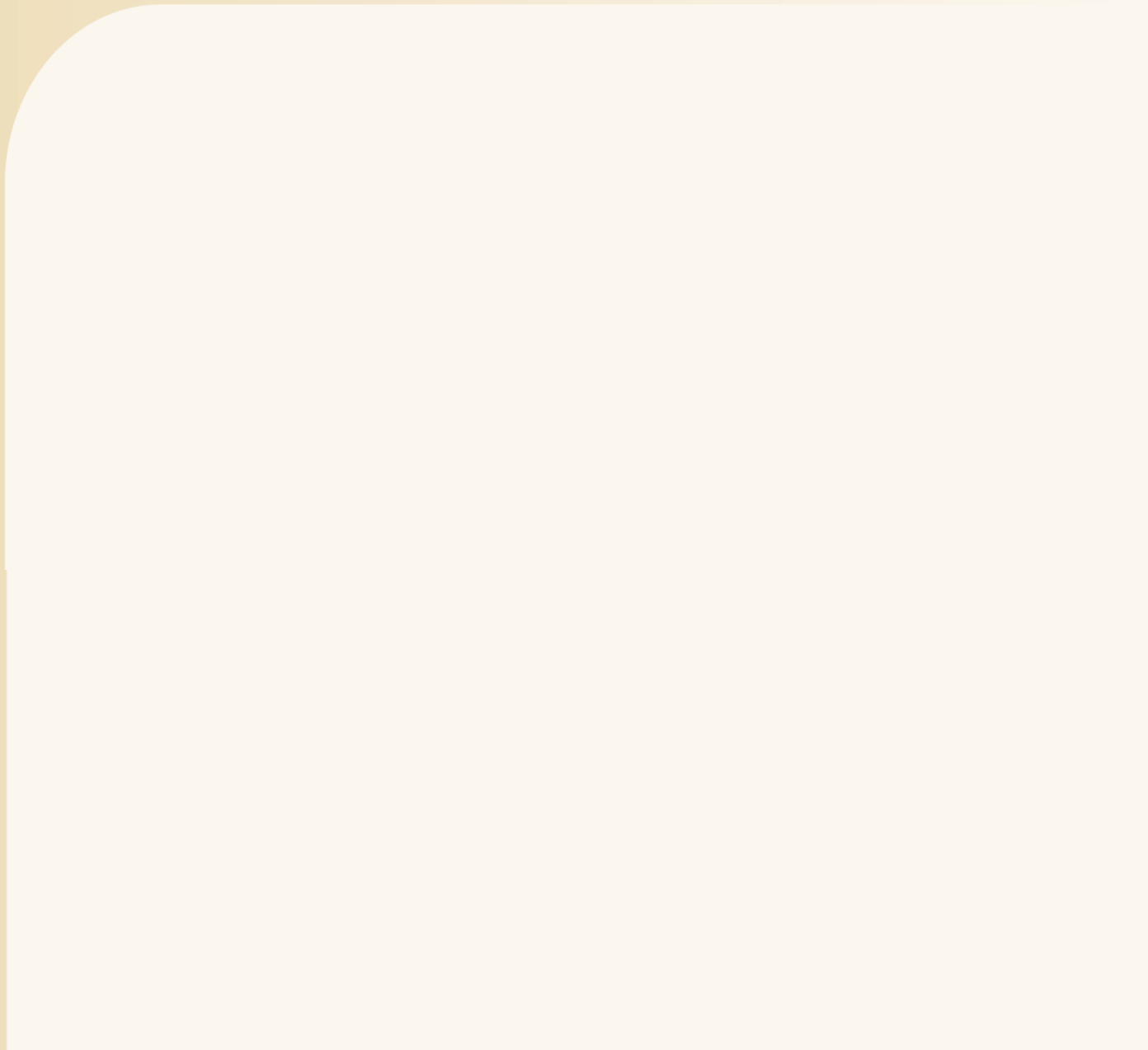
MONETARY AUTHORITY OF SINGAPORE

29 December 2015

Annex A**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON REGULATORY
FRAMEWORK FOR INTERMEDIARIES DEALING IN OTC DERIVATIVE
CONTRACTS, EXECUTION-RELATED ADVICE, AND MARKETING OF
COLLECTIVE INVESTMENT SCHEMES (PART I)**

1. Securities Association of Singapore
2. RHTLaw Taylor Wessing LLP

Note: This list only includes the names of respondents whose comments are included in this response document and who did not request that their submissions be kept confidential.



Monetary Authority of Singapore