RESPONSE TO FEEDBACK RECEIVED

9 July 2018

Response to Feedback Received on Parts 3 and 4 of the Consultation Paper on Proposed Amendments to the Securities and Futures Act, Financial Advisers Act and Trust Companies Act

Monetary Authority of Singapore

Contents

1 Preface

1.1 MAS issued a consultation paper on 18 September 2015, to seek comments on a set of amendments aimed at enhancing MAS' supervisory powers and business conduct requirements for financial institutions ("FIs") regulated under the Securities and Futures Act ("SFA"), the Financial Advisers Act ("FAA"), and the Trust Companies Act ("TCA"). In the same consultation paper, MAS also sought comments on allowing the pledging of securities held in Central Depository ("CDP") direct accounts for collateralised trading, as well as harmonising similar requirements across the SFA, FAA, TCA and the Banking Act ("BA"). On 7 November 2016, MAS published its response to the feedback received on the proposals to allow the pledging of securities held in CDP direct accounts for collateralised trading, and the proposal to extend sections 150B and 150C of the SFA in relation to inspections by foreign regulators to market infrastructure operators and approved trustees[1].

1.2 MAS has carefully considered the feedback on the remaining proposals. MAS would like to thank all respondents for their feedback. The list of respondents is in Annex 1, and full submissions with the name of respondents can be found in Annex 2.

1.3 MAS' response to the feedback received on the remaining proposals is set out in this response paper. These proposals will be progressively effected when the relevant legislation are amended. MAS will inform the industry as and when these policies are scheduled to be implemented. MAS will conduct further consultation if there are significant changes to these proposals.

2 Enhancements to Supervisory Powers

2.1 Requirement to seek MAS' approval prior to the appointment of Chief Executive Officers ("CEOs") and directors

2.1.1 All respondents supported the requirement for locally incorporated Recognised Market Operators ("RMOs"), Recognised Clearing Houses ("RCHs"), and Approved Trustees ("ATs") to seek MAS' approval prior to appointing their CEOs and directors.

[1] [http://www.mas.gov.sg/~/media/Response%20Proposed%20Amendments%20to%20SFA%20FAA%20TCA.pdf]. These amendments are intended to come into effect in 2018.

MAS' Response

2.1.2 MAS will proceed with the proposal to require all locally incorporated RMOs, RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.

2.2 Removal of officers under the ambit of "fit and proper" criterion

2.2.1 Majority of the respondents supported MAS' proposal to amend the grounds for removal of CEOs, or Resident Managers in the case of Licensed Trust Companies ("LTCs"), and directors of FIs regulated under the SFA, FAA and TCA to a single criterion of "fit and proper". One respondent raised concerns that the proposal may conflict with an FI's home regulator's requirements, while some other respondents asked for greater clarity on specific circumstances that could result in CEOs and directors ceasing to be "fit and proper".

2.2.2 One respondent commented that the removal of CEOs, Resident Managers, and directors would have a serious impact on the officer's future livelihood, professional standing and reputation. Some respondents highlighted the need for MAS to accord aggrieved persons an opportunity to be heard and to make available an independent judicial forum where the aggrieved person can appeal against MAS' decision.

MAS' Response

2.2.3 MAS will proceed with the proposal to align the grounds for the removal of CEOs, Resident Managers and directors to a single criterion of "fit and proper". The criteria for considering whether an officer is "fit and proper" are set out in the Guidelines on Fit and Proper Criteria (Guidelines No. FSG-G01).

2.2.4 While there could be operational differences between MAS' "fit and proper" criterion with that of other regulators, MAS does not expect the principle for CEOs, Resident Managers and directors to be fit and proper to hold office to be fundamentally different across reputable jurisdictions. In this regard, the likelihood of any significant conflict is low. In addition, for overseas incorporated entities for which MAS is not the primary regulator, MAS would engage the relevant home regulator should there be concerns over the CEO, Resident Manager, or director.

2.2.5 MAS acknowledges that the removal of CEOs, Resident Managers and directors would have a serious impact on the officer's future livelihood, professional standing and reputation. MAS has a rigourous process to assess the severity of any misconduct or circumstances that could have a bearing on an individual fitness and propriety. In addition,

MAS will accord persons who are aggrieved by MAS' decision to remove them from office an opportunity to be heard and an independent appeal process.

2.3 Extension of effective control provisions for takeover of locally incorporated RMOs, RCHs, and ATs

2.3.1 All respondents supported the extension of effective control provisions for takeover of locally incorporated RMOs, RCHs, and ATs.

MAS' Response

2.3.2 MAS notes the positive responses received and will proceed to implement the proposal.

2.4 Refinement of effective control provisions under the SFA and FAA

2.4.1 Majority of the respondents supported the requirement for a potential acquirer to seek MAS' approval only prior to the acquirer taking effective control of a Capital Markets Services Licensee or Licensed Financial Adviser (collectively referred to as "Licensees"). This would remove the need for any potential acquirer to obtain MAS' approval before entering into discussions or negotiations to acquire a controlling stake in a Licensee.

2.4.2 One respondent asked for more clarity on when MAS' approval should be sought during the acquisition process, and the time needed for MAS to review an application for acquisition of a Licensee. Another respondent held the view that MAS' approval should only be sought before the buyer takes "effective control", and not before the two parties enter into a conditional sale and purchase agreement.

2.4.3 Two respondents enquired whether a key management personnel in the group or parent company of a Licensee, who is in a position to determine or influence the policy of the Licensee, would be regarded as having effective control of the Licensee.

2.4.4 One respondent noted differences in the current effective control provisions for different types of entities regulated by MAS, and sought clarification on the policy intent for the different approaches taken. The respondent also suggested that MAS streamlines and rationalises the effective control provisions applicable to other entities regulated by MAS, particularly the provisions in the Insurance Act ("IA") for insurance brokers, to be consistent with the approach proposed for Licensees.

MAS' Response

2.4.5 MAS will only require a potential acquirer to obtain MAS' approval before he takes effective control of a Licensee. This means that a potential acquirer may enter into a conditional sale and purchase agreement without having to obtain MAS' prior approval, provided that the completion of the acquisition is subject to MAS' approval being obtained. MAS is mindful of the time-sensitive nature of acquisitions and takeovers, and will continue to review applications from potential acquirers in a timely manner. The timeframe for such reviews would depend on the complexity and circumstances of the case as well as the quality of the submission. MAS would also like to encourage all potential applicants to initiate the review process with relevant details as soon as practicable to avoid any unnecessary delays to the acquisition timeline.

2.4.6 MAS recognises that a key management personnel of a Licensee or of the group or parent company of the Licensee may determine the policies and business directions of the Licensee by virtue of the roles and responsibilities of his position held in the Licensee or in the group or parent company of the Licensee. It is not MAS' intention to apply the takeover provision to such a key management personnel, whose power to exercise control of a Licensee's operations is vested by the management position he holds in the Licensee, directly or indirectly.

2.4.7 MAS recognises the need for consistency in the takeover provisions in the SFA, FAA and IA. MAS intends to review the takeover requirements for insurance brokers in due course.

2.5 Notification requirements concerning adverse information on FIs

2.5.1 A number of respondents indicated support for the requirement for FIs regulated under the SFA, FAA and TCA to notify MAS as soon as they become aware of any adverse development or information concerning the fitness and propriety of their (i) substantial shareholders, controllers, or key officers; and (ii) group entities to the extent that such development or information materially and adversely affects the FI. Respondents also sought guidance and clarity on what is considered as "adverse developments that would materially affect or are likely to materially affect the FI itself and its group entities" and "the extent that the developments materially and adversely affect the FI". One respondent suggested that MAS provide an exhaustive list of "adverse developments".

2.5.2 One respondent commented that the notification requirement should only apply to matters concerning effective controllers holding 20% or more shareholding of the FIs, and not to substantial shareholders who do not have control over the FIs.

2.5.3 One respondent highlighted that group entities may be subject to regulatory obligations from the home regulator which may prevent the disclosure of certain information outside the group, and asked if MAS would enter into an undertaking with the home regulator (if required) to facilitate the disclosure of adverse development or information by the group entities. The respondent also asked whether an FI would be penalised for not disclosing such information to MAS, either because the FI is restricted from doing so by the regulations in the home jurisdiction or the FI is not aware of such adverse developments.

2.5.4 One respondent pointed out that FIs should be allowed to ascertain the nature and scope of the notifiable matters in order to avoid providing information to MAS that is preliminary or inaccurate. As such, the respondent suggested that the timeframe for notification be amended to "as soon as practicable" instead of "immediately".

MAS' Response

2.5.5 The circumstances constituting an adverse development that materially affects an FI can be wide-ranging and varied. As such, it would not be feasible to comprehensively prescribe the circumstances that require notification. The FI would be in a better position to assess a specific development, and consider whether there are reasonable grounds to believe that the development is likely to have a material and adverse impact on the FI. These developments include those that may have an adverse impact on the FI's (a) financial soundness, (b) honesty, integrity and reputation, or (c) ability to serve their customer on a business-as-usual basis.

2.5.6 MAS would like to clarify that substantial shareholders are currently subject to the "fit and proper" requirements under the SFA, FAA and TCA.[2] It is thus important for MAS to be notified of any adverse developments that materially affect or are likely to materially affect the fitness and propriety of the FI's substantial shareholders.

2.5.7 MAS recognises that FIs may be subject to regulatory obligations imposed by their home regulators which prevent them from making the required disclosure, and will

[2] For avoidance of doubt, MAS will be aligning the provisions of the Trust Companies Regulations with the fit and proper requirements set out under Regulation 14A of the Securities and Futures (Licensing and Conduct of Business) Regulations. The FSG-G01 Guidelines on Fit and Proper Criteria will also be extended to substantial shareholders of licensed trust companies.

take this into account in assessing whether to take regulatory action against FIs for breaching the notification requirement.

2.5.8 In addition, in assessing whether the FI has contravened the requirement to "immediately" notify MAS of the occurrence of the adverse development, MAS will give due regard to the facts and circumstances of each case, such as when the FI first learned of the adverse development, or whether there are arrangements in place for the FI to be informed of or kept abreast of such developments involving its controllers, to determine whether there was delay in notifying MAS.

3 Strengthening of Business Conduct Requirements

3.1 Failure to exercise reasonable care in submission of information

3.1.1 On the proposal for MAS to make an FI's failure to exercise reasonable care in submission of information a compoundable offence under the SFA, FAA and TCA, some respondents felt that FIs should not be penalised for providing inaccurate or subjective information that is not material, particularly where the information requested is in connection with a survey or ad hoc request. Related to this, another respondent requested that MAS makes clear in the legislation that it would only take action against an FI which has persistently provided erroneous information to MAS.

MAS' Response

3.1.2 The submission of accurate information to MAS is important for MAS to perform our supervisory function. For this reason, it is imperative that FIs take reasonable care in ensuring that information submitted to MAS is complete and accurate. MAS will thus proceed with the proposal.

3.1.3 It is not MAS' intent to automatically or mechanistically penalise FIs for errors in their submissions. In assessing whether to take action against the FI, MAS would consider the nature of the information submitted, the significance of the error(s), the robustness of the FI's internal controls and processes, the frequency of erroneous submissions to MAS, and the circumstances leading to the breach.

3.2 Service of notice, order or documents by MAS

3.2.1 Most respondents were supportive of MAS' proposal to serve documents via registered post and electronic service. One respondent suggested that consent to receive documents through electronic service from MAS should be given on an "opt in" basis, and

FIs should have the right to withdraw consent. Another respondent sought clarification as to whether the consent given by a person for electronic service of document is a one-time consent, or would have to be sought each time a document is to be served.

MAS' Response

3.2.2 MAS would like to clarify that currently most FIs are already users of MASNET, an electronic communication hub for secured information exchange between MAS and FIs; and are receiving documents such as announcements of new legislation, circulars and notices from MAS via MASNET. The use of electronic service in MAS' communication with FIs, including the serving of documents, will be more prevalent in future. It is MAS' intention for all FIs to eventually receive information and documents from MAS via electronic service, and the FI's consent would be valid for as long as the FI is licensed/regulated by MAS. For operational efficiency to all parties concerned, MAS does not intend to seek consent from the FI each time a document is served via electronic means.

4 Inspection Powers

4.1 Inspection by an appointed agent of the foreign regulator

4.1.1 Most of the respondents supported the proposal to amend the SFA to empower MAS to grant approval to foreign regulatory authorities to appoint an agent to inspect FIs regulated under the SFA.

4.1.2 One respondent raised concerns over the protection of proprietary and customer information given that the information would be accessible to appointed agents of foreign regulators and not the foreign regulators themselves. Another respondent suggested that the SFA be amended such that a foreign regulatory authority should not be granted inspection powers if it does not have regulatory oversight in its jurisdiction over the FI.

MAS' Response

4.1.3 MAS would like to emphasize that only a foreign regulator exercising a function that corresponds to a regulatory function of MAS would be allowed to conduct inspection of MAS-regulated FIs. In this regard, MAS would only allow foreign regulatory authorities to inspect (i) MAS-regulated FIs that foreign regulatory authorities have regulatory oversight of, such as MAS-regulated FIs which are branches and subsidiaries of FIs regulated by the foreign regulatory authorities; and (ii) MAS-regulated FIs which are service providers to their related overseas FIs under outsourcing agreements.

4.1.4 In the event that foreign regulators appoint agents to conduct the inspection on their behalf, the same safeguards and conditions would be imposed on agents of the foreign regulators. Such safeguards and conditions include the protection of the confidentiality of information, and the right of MAS to impose conditions on the inspection.

4.2 Appointment of external auditors of market infrastructure operators

4.2.1 Majority of the respondents were supportive of the requirement for AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. One respondent requested for MAS to issue guidelines on the application process and timelines.

MAS' Response

4.2.2 FIs are expected to plan and decide on what is required for the smooth running of their operations. It would be overly prescriptive for MAS to issue guidelines for such an administrative process.

MONETARY AUTHORITY OF SINGAPORE

9 July 2018

Annex A

LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON PROPOSED AMENDMENTS TO THE SECURITIES AND FUTURES ACT, FINANCIAL ADVISERS ACT AND TRUST COMPANIES ACT

1. Investment Management Association of Singapore ("IMAS")
2. WongPartnership LLP ("WongP")
3. Securities Association of Singapore (SAS) Member Companies ("SAS")
4. Citibank N.A., Singapore Branch ("Citibank")
5. Credit Suisse AG ("Credit Suisse")
6. Great Eastern Holdings Limited; Great Eastern Life Assurance Company Limited; Overseas Assurance Corporation Limited; and Great Eastern Financial Advisers Private Limited ("Great Eastern")
7. The Alternative Investment Management Association Limited ("AIMA")
8. Sidley Austin LLP ("Sidley Austin")
9. Allen & Overy LLP ("A&O")
10. Deutsche Bank AG, Singapore Branch ("Deutsche Bank")
11. Moody's Investors Service Singapore Pte Ltd ("Moody's")
12. Peter T. Ng
13. Prudential Assurance Company Singapore (Pte) Limited ("PACS")

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

Please refer to Annex B for the submissions.

Annex B

FULL SUBMISSIONS FROM RESPONDENTS TO THE CONSULTATION PAPER ON PROPOSED AMENDMENTS TO THE SECURITIES AND FUTURES ACT, FINANCIAL ADVISERS ACT AND TRUST COMPANIES ACT

Note: The table below only includes submissions for which respondents did not request confidentiality.

S/N	Respondent	Full Response from Respondent
1	Investment Management Association of Singapore ("IMAS")	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.** We are supportive of the MAS' proposal to apply consistent treatment to all FI regulated by the MAS and the requirement for locally incorporated RMOs, locally incorporated RCHs and ATs to seek the MAS' approval prior to appointing their CEOs and directors. **Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper".** We would like to clarify the grounds for removal of directors and CEOs on the basis of not being "fit and proper". In addition to the scenarios set out under Section 97(1) and 97(1AA) of the draft SFA, what are the other circumstances that a director or executive officer would be deemed not "fit and proper" and be directed to be removed from office? Also, current regulations do not prescribe a recourse for directors or executive officers to appeal against being directed by the MAS to be removed from office. We urge the MAS to make recourse available to the individuals under such circumstance. With reference to Section 97 (1AA) and (2), how will the MAS determine "failure to discharge duties of employment"? It would be helpful if a reference for duties of employment can be provided to give greater clarity on this matter. **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller**

		to seek MAS' approval only prior to taking effective control of the CMSL or LFA. We would like to clarify at which stage in the process the MAS should be engaged. In order to better manage an undertaking of this nature, which is expected to have a certain level of complexity, we seek to understand what the approval timeline typically is. Also, we would like to seek clarification on the term "in a position to determine the policy of the holder of a capital markets services licence" under the Draft amendments 97A(6)(b)(iii). We note that the proposed amended definition of a person regarded as obtaining effective control of a CMSL / LFA would include the new limbs: "… (ii) the directors of the holder of a capital markets services licence are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in the holder of a capital markets service licence); or _ (iii) the person (whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in the holder of a capital markets services licence) is in a position to determine the policy of the holder of a capital markets services licence;…" Could MAS clarify that the new limbs (ii) and (iii) are not meant to capture persons such as the CEO or CIO of the group/parent company of the CMSL/LFA? Such persons would be able to direct the policies of the group by virtue of their position, but it is not practically feasible to obtain MAS prior approval for any change in such personnel, and we assume that is in any case not MAS' intention. We are supportive of MAS' proposal to amend Section 97A of the SFA and Section 57A of the FAA to better reflect MAS' policy intent that a potential controller is only required to seek MAS' approval prior to taking effective control of a CMSL or LFA. This would, for instance, remove a potential impediment to any potential controller wishing to enter into preliminary negotiations to acquire a controlling stake in a CMSL or LFA. The potential controller may find it too burdensome if it has to seek MAS' approval in order to conduct exploratory negotiations. However, we would like to seek MAS' clarification as to whether a potential controller may enter into a conditional sale and purchase agreement to acquire effective control in a CMSL or LFA without MAS'

		approval but subject to a condition precedent that it needs to obtain the prior written approval of MAS for completion of the transaction giving rise to the change of effective control. The draft Section 97A(2) of the SFA and Section 57A(2A) of the FAA appear wide enough to allow a potential controller to enter into such a binding agreement although this was not discussed explicitly in the consultation paper dated 18 September 2015. In our view, applying such an approach will still enable MAS to satisfy its regulatory objective of ensuring that a new controller is fit and proper since approval of MAS is required prior to the occurrence of the change of control. We note based on our involvement in global transactions that in many jurisdictions, regulatory approval is only required prior to completion of the transaction giving rise to the change of control, and not prior to entry into a conditional sale and purchase agreement which requires regulatory approval prior to completion of the transaction giving rise to the change of control. Separately we would also point out that effective control provisions applicable to insurance brokers (and which are set out in Section 35ZI of the Insurance Act (Chapter 142 of Singapore) ("IA")) is similar to the provisions set out in Section 97A of the SFA and 57A of the FAA. We would suggest that if Section 97A of the SFA and Section 57A of the FAA are amended in the manner as proposed then the effective control provisions in Section 35ZI of the IA should also be amended for the sake of regulatory consistency. This will remove confusion which could arise as a result of the application of different effective control provisions to different regulated entities **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** NIL **Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers.** We would like to seek further clarity on the MAS' expectation on this proposal. The MAS might want to consider providing more guidance on "adverse developments that materially affect or are likely to materially affect the FI itself and its group entities" and, "the extent that the developments materially and adversely affect the FI". With more clarity, FIs can then communicate this expectation to group entities

		more effectively, so that FIs can be notified timely and more accurately when such situations arise. Guidance in the form of threshold financial impact would also be particularly helpful as risk to reputation is difficult to determine and quantify before the event. It may not be straightforward to determine if an adverse development within the group will have a material and adverse impact on the reputation of the FI. For example, in the case of any legal proceeding or litigation, there is an element of uncertainty; it would be harsh to penalise an FI, that has performed an assessment on the matter, and in consideration that the outcome will not have a material adverse effect then decided not to report the matter. Also, we seek to draw the MAS' attention to the fact that group entities may be subject to regulatory obligations from the home regulator that prevent the disclosure of certain information outside the Group. Under such circumstances, would the FI be penalised for not disclosing such information to the MAS? To the extent that the FI is not informed of such developments, would it be penalised for non-disclosure? At the same time, if required by the home regulator of the group entities, would the MAS be prepared to enter into an undertaking, before such disclosure may be made? Relating to Paragraph 3.8(b) of the consultation paper, we hope that the MAS can consider the materiality of impact on the FI, as in the case of paragraph 3.8(a), on "matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers", when determining whether it is a reportable matter. Also, we would like to request for more guidance on what falls within the scope of "controllers". Also, we would like to seek clarity on the term "substantial shareholders". If a FI is an indirect subsidiary of another corporate entity, does the term "substantial shareholders" refer to the immediate parent company of the FI only (which can be merely a holding company)? Or should it be interpreted to only refer to the ultimate parent company in the shareholding tree (which has ultimate beneficial interest in the FI)? In the case where the ultimate parent company is the "substantial shareholder", the shareholding structure may be long and complex. What should then be the threshold level of ownership that would require reporting to the MAS? In the case where the ultimate parent company referred above is a public listed company and is already subject to the requirement of providing timely disclosure of material events imposed by the local regulator or the stock exchange, can such notification requirements to the MAS be waived given that such information would in any case be publicly available?

		Lastly, in reference to Annex 2 - Draft Amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations, we would like to clarify if entities sharing common directors be captured within the definition set out in 2(a),(b) and (f) and accordingly, be defined as an "associate" of the FI and captured within the definition of "group"? **Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.** NIL **Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.** NIL **Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.** NIL **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.** Recognising that human error will always be a risk in any process that is not fully automated, we seek the MAS' guidance on how "reasonable care" is determined. We would also like to understand the MAS' rationale for imposing penalties on the individual for a failure to take reasonable care in submission of information to the MAS, regardless of whether it was wilful or not. Imposing individual liability seems harsh particularly if the offence is not committed wilfully. In addition, we would also like to clarify which individual is the subject of the penalty in this case. Would the MAS look to the staff who prepared the report or the director or executive officer who provided the sign off on the report? We would appreciate further guidance on the scope of information that is captured under this proposal. While information provided in

		mandatory regulatory submissions are critical and there is no margin for error in such submissions, we are of the view that "any information" is too broadly defined. Certain information including responses to surveys and ad-hoc queries, often involves projection and assumption making, and may not demand a similar level of resourcing and time. Hence, a penalty to punish for inaccuracy in non-critical information does seems excessive. In our view, the materiality of information and whether the information forms part of a mandatory regulatory submission should be a factor of consideration. Imposing individual liability and designating an offence for failure to take reasonable care in the provision of all information (including immaterial or non-mandatory information) is too stiff in our view. **Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.** NIL **Question 11: MAS seeks comments on the proposal to –** **(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and** **(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** With reference to para 3.14 and 3.15 of the Response to Feedback Received- MAS-SGX Joint Consultation on the Review of Securities Market Structure and Practices, we would like to seek confirmation from the MAS that institutional investors will be exempted from this collateral requirement in view that these trades pose low settlement risk as they are settled via Delivery-versus-Payment (DVP). **Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities.** NIL **Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.** NIL **General Comments**

		Annex 2 of the Public consultation refers to, regulation 16(5), 17(3) and 47F, under Section 55 – Offences, in Part VI - Miscellaneous, of the Draft Amendments To The Securities And Futures (Licensing And Conduct Of Business) Regulations. We were unable to find these 3 regulations in the SFR. Are these 3 regulations being recorded somewhere else?
2	WongPartnership LLP ("WongP")	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.** We are supportive of MAS' proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors so as to ensure consistent treatment for all Regulated FIs and have no further comments on this question. **Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper".** We are supportive of MAS' proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper" and have no further comments on this question. **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.** We are supportive of MAS' proposal to amend Section 97A of the SFA and Section 57A of the FAA to better reflect MAS' policy intent that a potential controller is only required to seek MAS' approval prior to taking effective control of a CMSL or LFA. This would, for instance, remove a potential impediment to any potential controller wishing to enter into preliminary negotiations to acquire a controlling stake in a CMSL or LFA. The potential controller may find it too burdensome if it has to seek MAS' approval in order to conduct exploratory negotiations. However, we would like to seek MAS' clarification as to whether a potential controller may enter into a conditional sale and purchase agreement to acquire effective control in a CMSL or LFA without MAS' approval but subject to a condition precedent that it needs to obtain the prior written approval of MAS for completion of the transaction giving rise to the change of effective control. The draft Section 97A(2)

		of the SFA and Section 57A(2A) of the FAA appear wide enough to allow a potential controller to enter into such a binding agreement although this was not discussed explicitly in the consultation paper dated 18 September 2015. In our view, applying such an approach will still enable MAS to satisfy its regulatory objective of ensuring that a new controller is fit and proper since approval of MAS is required prior to the occurrence of the change of control. We note based on our involvement in global transactions that in many jurisdictions, regulatory approval is only required prior to completion of the transaction giving rise to the change of control, and not prior to entry into a conditional sale and purchase agreement which requires regulatory approval prior to completion of the transaction giving rise to the change of control. Separately we would also point out that effective control provisions applicable to insurance brokers (and which are set out in Section 35ZI of the Insurance Act (Chapter 142 of Singapore) ("IA")) is similar to the provisions set out in Section 97A of the SFA and 57A of the FAA. We would suggest that if Section 97A of the SFA and Section 57A of the FAA are amended in the manner as proposed then the effective control provisions in Section 35ZI of the IA should also be amended for the sake of regulatory consistency. This will remove confusion which could arise as a result of the application of different effective control provisions to different regulated entities. **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** We are supportive of MAS' proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs and ATs, so as to align MAS' regulatory approach for such entities with that for CMSLs, LFAs, AEs, ACHs, LTRs and AHCs. However, we would respectfully suggest that MAS should also take this opportunity to streamline and rationalise the effective control provisions applicable to the different entities regulated by MAS, and to clarify the policy intent behind the different approaches for each set of regulated entities. Presently, there are subtle differences in the effective control provisions applicable to the different regulated entities, and the rationale behind such differences is not always clear. We have set out below some examples of such differences: <u>Application of Section 7(6)(a) of Companies Act (Chapter 50 of Singapore) ("CA")</u> We note that the effective control provisions being proposed for locally incorporated RMOs and locally incorporated RCHs are similar to the current effective control provisions applicable to AEs, LTRs, ACHs and

		AHCs. These provisions state that MAS' prior approval is required before a person shall become a 20% controller. For the purpose of these provisions, a 20% controller refers, inter alia, to a person who alone or together with his associates holds not less than 20% of the shares in the relevant regulated entity. In addition, these provisions also contain a deeming provision which states that a person is deemed to hold a share if he is deemed to have an interest in that share under Section 7(6) to (10) of CA. In this connection, it should be noted that Section 7(6)(a) of CA deems a person to have an interest in a share if he has entered into a contract to purchase that share. Pursuant to these provisions, a person would be deemed to be a 20% controller of a regulated entity merely by entering into a contract to purchase more than 20% of the shares in the regulated entity even if completion of the contract resulting in the change of control is conditional upon MAS' approval. It would be helpful if MAS could clarify the policy intent underlying these provisions in the context of the scenario described above. We would also point out that Section 35ZI of the IA and the proposed new Sections 97A and 292AA of the SFA and Section 57A of the FAA do not contain the deeming provision (as described above) which provides that a person is deemed to hold a share if he is deemed to have an interest in that share under Section 7(6) to (10) of the CA. Accordingly, in our view, it is possible based on a plain reading of Section 35ZI of the IA and the proposed new Sections 97A(2) and 292AA of the SFA and Section 57(2A) of the FAA to say that MAS approval is required only prior to the completion of a transaction giving rise to change of control, and not prior to the execution of a conditional sale and purchase agreement which requires MAS approval prior to the occurrence of the change of control. However such an interpretation is not possible for the provisions contained in Sections 27, 41B (proposed), 46U, 70, 81AA (proposed) and 81ZE of the SFA, Section 16 of the Trust Companies Act (Chapter 336 of Singapore), Sections 15A and 15B of the Banking Act (Chapter 19 of Singapore), Sections 10 and 12 of the Finance Companies Act (Chapter 108 of Singapore) and Sections 28 and 29 of the IA due to the presence of the deeming provision. It would be helpful if MAS could take the opportunity to align the various effective control provisions which apply to the different regulated entities with a view to ensuring regulatory consistency and uniformity of treatment of all regulated entities. <u>Criteria for approval / conditions that MAS may impose for grant of approval</u> The effective control provisions being proposed for CMSLs, LFAs and ATs contain certain express criteria for any grant of approval to a

		potential controller, as well as examples of conditions that MAS may impose in connection with any such approval. These express criteria are as follows: (a) the applicant is a fit and proper person to have effective control of the relevant regulated entity; (b) having regard to the applicant's likely influence, the relevant regulated entity is likely to continue to conduct its business prudently and comply with the provisions of the relevant statute and directions made thereunder; and (c) the applicant satisfies such other criteria as may be prescribed or as may be specified in written directions by MAS. Examples of conditions that MAS may impose in connection with any such approval are as follows: (i) restricting the applicant's disposal or further acquisition of shares or voting power in the relevant regulated entity; or (ii) restricting the applicant's exercise of voting power in the relevant regulated entity. Substantially similar approval criteria and conditions also feature in the effective control provisions of licensed trust companies, licensed banks and licensed insurers. However, it appears that no such approval criteria and conditions are prescribed in the effective control provisions of AEs, LTRs, ACHs, AHCs, finance companies and registered insurance brokers. It would be helpful if MAS could clarify the policy intent behind prescribing approval criteria and conditions in the effective control provisions of some of the regulated entities but not others. For the sake of regulatory consistency and uniformity of treatment of all regulated entities, we would respectfully suggest that MAS should align the various effective control provisions applicable to the different regulated entities, and, if appropriate in view of MAS' policy intent, prescribe approval criteria and conditions in all effective control provisions of regulated entities. Separately, we would like to point out that the titles "Control of substantial shareholding in recognised market operators" and "Control of substantial shareholding in recognised clearing houses" for the proposed Sections 41B and 81AA of the SFA may be somewhat misleading. This is because "substantial shareholding" usually refers to a 5% stake in a company, not a 20% stake which is the threshold applicable under those proposed provisions. **Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to**

		materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers. We are supportive of MAS' proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers. As such notification requirements are not statutorily regulated at present, such requirements (if any) are only included in the licence terms of the entity. MAS' proposal in this regard will thus give the requirement to notify more force. **Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.** We are supportive of MAS' proposal to extend Sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs, and ATs and have no further comments on this question. **Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.** We are supportive of MAS' proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC and have no further comments on this question. **Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.** We are supportive of MAS' proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. In this connection, we would suggest that MAS prescribes or issues guidelines on the application process and timeline

		for such approvals in order to enable regulated entities to satisfy their obligations on a timely basis. **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.** We are supportive of MAS' proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate and have no further comments on this question. **Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.** We are supportive of MAS' proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA and have no further comments on this question. **Question 11: MAS seeks comments on the proposal to –** **(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and** **(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** We have some comments and/or questions on MAS' proposal in Question 11, as set out below: (i) How does the proposed system deal with each individual instance of topping up of collateral? For example, under the new regime the broker must collect collateral of at least 5% of customers' net open positions directly from each customer by end of trade day. If these are automatic transfers, how does CDP know how much transfer at the end of each business day? If the transfers are not automatic, is it the broker on its own who determines how much to transfer, and then effects the transfer to the broker-linked sub account? If so, will there be safeguards against the broker transferring more than necessary? For example, banks effect recorded telephone calls verifying identity with customer, so can brokers do the same? In our view, further clarification in this regard may be useful. (ii) Is the whole system designed only for CDP direct accounts, i.e., it will not work for securities held in nominees' names? How then does the aim of getting brokers to collect 5% of open net positions apply when all of the customer's securities are in a DA account and not a direct account?

		(iii) How will investors be able to show to third parties like banks and other creditors the actual free balance in their direct accounts? In our view, this is important if investors wish to pledge some of the securities to banks (separately from the amount to be automatically pledged to the brokers). Currently, some banks will rely on the investors showing their CDP statements. Under the new proposed system: • Will the CDP statements show there is a broker-linked sub account linked to that investor's account? • If the transfers are automatic, any CDP statement more than 1 day old will not be an accurate statement of the actual free balance. Will there be a means of getting on-line statements to show the current free balance on any particular day? We believe that this is information that investors themselves and their bankers may want to know. **Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities.** If the system is only for direct accounts, we would suggest the following amendments to Part I of Form I: The replacement of "Please fill in either (1) or (2) only:" with "If (A) For Direct Account Holder is selected, please fill in either (1) or (2) only, and if (B) For Depository Agent is selected, please fill in (2) only" **Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.** We have no comments on Question 13. **General Comments** NIL
3	Securities Association of Singapore (SAS) Member Companies ("SAS")	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.** SAS members do not have any comment. **Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and**

		Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper". The grounds for removal of CEOs should be further detailed rather than to a single criterion of not being "fit and proper". This is to provide understanding for management and shareholders on the implications of the FI of its current practices or controls which may have been lacking in leading to the removal of the CEO. In addition, as no independent forum is conducted in accusing the CEO of failing the "fit and proper" criteria, it would be grossly unfair and lack legal basis if the removal were not to be legally justified under a judicial forum. It would also prevent politicising when no detailed reasons are given on such removals. **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.** SAS members are agreeable to proposal. **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** SAS members do not have any comment. **Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers.** Substantial shareholders are deemed as anyone who has more than 5% interest in the company. As substantial shareholders do not control the company, having such a requirement is of little benefit to the company. It is proposed to delete substantial shareholders or increase interest to 20% or more. **Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.** SAS members do not have any comment.

		Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC. Appointed agents of foreign regulatory authority are not the same as persons from the foreign regulatory authority. Members are therefore concerned on the protection of proprietary and customer information. They would like to ask the MAS to clarify on the circumstances that such approval be granted and the inspection power of the appointed agent. Further, guidance on the criteria that a person must satisfy to become an appointed agent would be helpful. **Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.** SAS members do not have any comment **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.** Failure to take reasonable care in furnishing information to MAS should never be considered as an offence unless there is an intention to deliberately mislead the MAS. Not all information requested would be related to supervisory decisions. There must be detailed clarity as to what constitutes "reasonable care"? At most it should be a breach of duties with the relevant punitive actions. Factors which could be taken into account when assessing whether reasonable care has been taken include the length of time given to FI to furnish the requisite info, whether the info required is easily understandable, readily available and retrievable, etc. Without clarity on reasonable care, it is highly subjective and may lead to unintended abuse; human errors may occur in the process of furnishing such information which may ended up being wrongly construed as an offence. As a result, FI's will then take a longer time to furnish information to MAS with a fear of committing an unintended offence.

		MAS may, verbally or in writing, request for information from a Regulated FI. Verbal requests may likely be subjected to wrong interpretation or miscommunication. For information to be furnished by FIs, MAS should make its request in writing with clear reference that a request is made under the relevant regulation(s) or orders. There should also be an internal process within MAS before such request can be made. This would be consistent with request from other regulatory bodies, for example, the Singapore Police Force. In addition, information requested may be in connection with a survey. In this case, FIs should not be penalised for inaccurate or subjective information that is not material. **Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.** Consent to receive documents from the MAS should be given as an "Opt in" basis including the right to withdraw consent. **Question 11: MAS seeks comments on the proposal to –** **(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and** **(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** Members are supportive of both proposals as it reduces the administrative burden on investors to pledge their securities to the brokers. Members would like to provide feedback or seek further clarification on the following: • Would the process of charging and discharging be allowed electronically* or hardcopy form submission or both? • If hardcopy form is allowed, it is assumed the customer would need to inform CDP or his trading broker of his decision. For the latter, what form(s) should FIs rely on? • It is suggested that automatic charging/discharging of securities held in/out of DA sub-account should also be allowed. • If additional allotment of shares, arising from any corporate action such as rights issue, bonus, consolidation or split, will these be credited into the pledged accounts? • This should also apply to securities CARRIED in the sub-balance (in addition to MOVED). For example, the entitlements from corporate

		action for securities held in the sub-balance should be accrued & credited into the sub-balance account. *Note:* **For electronic submission, it is assumed the investor would personally login to his/her direct CDP account to make the transfer.* **Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities.** Members are supportive of proposal to remove requirement for a witness signature if it is submitted electronically. However, if hardcopy form is still used, witness signature should still be required. They would also like to seek clarification on who can serve as a witness. **Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.** SAS members are dependent on SGX on the timeline to implement the proposed changes to their Collateral Risk Management System. The function to create sub-balances within CDP direct accounts is to be implemented under phase 2 of the Post Trade System ("PTS"). Currently, phase 1 is scheduled to be completed in March 2017. The estimated time to implement phase 2 is between 12 months to 18 months after completion of phase 1. Accordingly the timeline would be between March 2018 to September 2018 or even later. Members are currently building their back-office systems and these systems may not be ready before 2017. Thereafter, there will be a need to allow the systems to be stabilised before they could be enhanced with the functionalities of pledging securities to the brokers' systems. There will be substantial development work on front end-client facing as well as back-end processing systems. This may require a minimum of 1 year from the time the new back office system goes live. **General Comments** NIL
4	Citibank N.A., Singapore Branch ("Citibank")	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.** NIL

		Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper". We fully agree with MAS's intent of ensuring consistent treatment for all Regulated FIs with respect to approval and removal of CEOs and Directors. We note however that for the Regulated FIs, the CEO or director that is to be removed does not have the opportunity to be heard, to show cause, or to appeal his removal. Such rights are available in respect of the removal of CEO/directors of banks (Banking Act, section 54(4)-(6)), merchant banks (MAS Act, section 30AAI(4)-(6)), finance companies (Finance Companies Act, section 47(4)-(6)), and insurers (Insurance Act, section 31(12)-(14)). We respectfully submit that the treatment of the Regulated FIs and such other regulated financial institutions should also be consistent as far as possible. Given that removal from office can have a serious impact of such an officer's future lifelihood, his professional standing and reputation, we submit that such officer should have an opportunity to show cause and to appeal the decision of the MAS, similar to officers of the second group of financial institutions. This is especially as the fit and proper criterion is potentially a wider criterion than the previous "list-based" approach. In the alternative, we would be grateful if the MAS can clarify why different treatments should be accorded to the two groups of financial institutions on this aspect. **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.** NIL **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** NIL **Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as**

		matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers. NIL **Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.** NIL **Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.** NIL **Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.** NIL **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.** NIL **Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.** NIL **Question 11: MAS seeks comments on the proposal to –** **(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and** **(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** NIL

		Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities. NIL **Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.** NIL **General Comments** NIL
5	Credit Suisse AG ("Credit Suisse")	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.** No comment. **Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper".** We would like to clarify on the amendments to Section 54 of Banking Act as followed: ▪ Please clarify if the term "disqualification" will be removed. ▪ Please clarify if the fit and proper criterion will mirror the Guidelines on Fit and Proper Criteria. **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.** No comment. **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** No comment.

		Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers. We would like to request that the scope of "adverse developments" as to be prescribed by the MAS be an exhaustive list in order that there is clearer guidance to banks to facilitate compliance. We would also like to request for the MAS to provide clearer guidance on what "materially affect" entails. **Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.** No comment. **Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.** No comment. **Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.** No comment. **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.** No comment. **Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.** No comment.

		Question 11: MAS seeks comments on the proposal to – **(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and** **(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** If the brokers need more than 5% of securities to be pledged, we would like to seek clarification on how brokers can change the parameter to allow the automatic charging of securities; will it be required to change on a trade-by-trade basis or will the parameter remain the same once we have submitted the one-off Form I? In general, we welcome the proposal which could improve the pledging process. We would like to clarify on the format for the Broker's approval, ie, will it be via email or any other electronic system? We would also like to understand the approval process in details. **Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities.** No comment. **Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.** No comment. **General Comments** For our client trades via their direct account, the settlement is always DVP. However, the mode of settlement with CDP is FOP and the cash moved separately. The securities will be released by us as soon as we have sighted the funds. We would like to seek confirmation from the MAS/SGX that this mode of settlement is considered as DVP trades. For foreign listed securities, we would like to see further clarification on the scope. Would dual listed securities considered as foreign listed securities? For example, Jardine Matheson (securities) is tradable in HK / SG, would this be classified as foreign listed?
6	Great Eastern Holdings Limited; Great	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.**

	Eastern Life Assurance Company Limited; Overseas Assurance Corporation Limited; and Great Eastern Financial Advisers Private Limited ("Great Eastern")	NIL comments. **Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper".** Noted on the new definition for Executive officer which is defined as any person, by whatever name called, who is - (a) in the direct employment of, or acting for or by arrangement with, the licensed financial adviser; and (b) concerned with or takes part in the management of the licensed financial adviser, on a day-to-day basis We would like to seek clarity if the above definition is to be applicable to: (a) A director or an equivalent person; or (b) A chief executive officer or an equivalent Person **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.** NIL comments. **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** NIL comments. **Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers.** NIL comments. **Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.** NIL comments.

		Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC. NIL comments. **Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.** NIL comments. **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.** We are of the view that the penalty for submission of material false information by a person is sufficient to serve as deterrence to institutions. We wish to clarify with MAS on the definition of "persistently furnishes", as we are of the view that to set a new penalty (at half the maximum penalty for submission of material false information) for non-material information which may be highly dependent to human error may be excessive. **Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.** NIL comments. **Question 11: MAS seeks comments on the proposal to –** **(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and** **(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** NIL comments.

		Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities. NIL comments. **Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.** NIL comments. **General Comments** NIL comments.
7	The Alternative Investment Management Association Limited ("AIMA")	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.** NIL **Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper".** NIL **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.** We note that the proposed amended definition of a person regarded as obtaining effective control of a CMSL / LFA would include the new limbs: "… (ii) the directors of the holder of a capital markets services licence are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in the holder of a capital markets service licence); or

		(iii) the person (whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in the holder of a capital markets services licence) is in a position to determine the policy of the holder of a capital markets services licence;…" Could MAS clarify that the new limbs (ii) and (iii) are not meant to capture persons such as the CEO or CIO of the group/parent company of the CMSL/LFA? Such persons would be able to direct the policies of the group by virtue of their position, but it is not practically feasible to obtain MAS prior approval for any change in such personnel, and we assume that is in any case not MAS' intention. **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** NIL **Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers.** NIL **Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.** NIL **Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.** While the MAS has included as a factor for its consideration for grant of an approval to a foreign regulatory authority to inspect a Regulated FI, whether such foreign regulatory authority has regulatory oversight in its jurisdiction over the Regulated FI, we would like to propose that the SFA should also be amended to clarify that a foreign regulatory authority shall not be granted inspection powers if it does not have regulatory oversight in its jurisdiction over the Regulated FI.

		Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily. NIL **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.** We would appreciate if the MAS could clarify on what would be deemed as "reasonable care" in providing information. For the Regulated FI to be guilty of an offence irrespective of whether the information provided is false or misleading in a material particular or not is an onerous requirement, especially in light of the numerous surveys that Regulated FIs, such as fund managers are required to complete in a year (and which take up considerable man hours and usually concerted intergroup assistance to complete). Could certain standards, for example, "deceit", "wilful failure" or "gross negligence" be introduced to make the standard of care clearer? We note the penalties for this offence under the SFA is higher than for the same offence in the FAA. Could a certain level of uniformity be introduced in the penalties? **Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.** NIL **Question 11: MAS seeks comments on the proposal to –** **(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and** **(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** NIL **Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities.** NIL

		Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest. NIL **General Comments** NIL
8	Sidley Austin LLP ("Sidley Austin")	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.** We do not have any view to express on this question. **Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper".** We do not have any view to express on this question. **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.** We note that the proposed amended definition of a person regarded as obtaining effective control of a CMSL / LFA would include the new limbs: "… (ii) the directors of the holder of a capital markets services licence are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in the holder of a capital markets service licence); or (iii) the person (whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in the holder of a capital markets services licence) is in a position to determine the policy of the holder of a capital markets services licence;…" Could MAS clarify that the new limbs (ii) and (iii) are not meant to capture persons such as the CEO or CIO of the group/parent company

		of the CMSL/LFA? Such persons would be able to direct the policies of the group by virtue of their position, but it is not practically feasible to obtain MAS prior approval for any change in such personnel, and we assume that is in any case not MAS' intention. **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** We do not have any view to express on this question. **Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers.** We do not have any view to express on this question. **Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.** We do not have any view to express on this question. **Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.** We do not have any view to express on this question. **Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.** We do not have any view to express on this question. **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.**

		With respect to the proposal to make it an offence for a Regulated FI's "failure to exercise reasonable care" regardless of the materiality of the information provided to MAS, it must be anticipated that for immaterial information requests, Regulated FIs may not impose the need for management review, or even peer review. This would be reasonable and necessary for practical reasons, but would leave the Regulated FI vulnerable to the finding that it constitutes an offence, should the MAS find the information received erroneous/inaccurate (even if only partially so). This point should also be considered in light of the fact that Regulated FIs such as fund managers are required each year to complete surveys (each a separate exercise addressing specific areas/themes), which requires considerable man-hours and usually concerted intergroup assistance to complete. Hence we would be grateful if MAS could clarify the standard of care (taking into account the practical constraints on Regulated FIs like fund managers who often do not have the human resources of larger financial institutions like banks), what would MAS consider as failure to exercise reasonable care in their case? Our clients (who are largely fund managers) feel that this proposal puts them in an inherently untenable position, and that in an environment where there are ever-growing informational requests made of licensees, such proposals in their view unnecessarily increase the workload and operational demands that licensees bear in respect of informal and non-material information requests and surveys. **Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.** We do not have any view to express on this question. **Question 11: MAS seeks comments on the proposal to – (a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and (b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** We do not have any view to express on this question. **Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities.** We do not have any view to express on this question. **Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.**

		We do not have any view to express on this question. **General Comments** NIL
9	Allen & Overy LLP ("A&O")	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.** NIL **Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper".** NIL **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.** We respectfully do not agree with the implicit suggestion in paragraph 3.5 of the Consultation Paper that a relevant "understanding" between parties amounting to an "arrangement" requiring approval under Section 97A of the Securities and Futures Act (SFA) will possibly arise at the early stage of negotiations for the takeover. Although we accept that the reference in SFA Section 97A(6)(a)(i) to "... any formal or informal scheme, arrangement or understanding, to acquire those shares ..." is broadly worded, it is nonetheless legally not as wide as the Consultation Paper appears to imply that it is, i.e. in our view a relevant "understanding" would in the vast majority of cases not arise at an early stage of negotiations or indeed at any stage before negotiations are effectively concluded. We note that there have been numerous case law authorities that have discussed the meaning of expressions such as agreement, arrangement and understanding in similar and related contexts and we do not think that, based on such cases, MAS' very wide interpretation of "understanding" is supported on these authorities. While we do not wish to burden this submission with lengthy citation of case law, we would be happy to expand on this technical point if needed.

		We do note that in addition to the reference in Section 97A(6)(a)(i) to (amongst other things) "understanding", there are a number of other limbs to the definition of an "arrangement". For example, SFA Section 97A(6)(a)(ii) refers to "... making or publishing a statement, however expressed, that expressly or impliedly invites the holder of those shares to offer to dispose of his shares to the first person". This limb seems to us more likely to potentially apply at an early stage of negotiations. However, we believe that it can be technically avoided by (for example) inviting the holder to enter into exploratory discussions and ensuring that the holder is not invited to make any offer capable of acceptance. There is also a separate issue of whether "making or publishing a statement" includes a private communication. We believe there are arguments in favour of the view that a private communication should not be regarded as a "statement", but even if this is wrong, the communication between can (as we have suggested) be worded so as to avoid inviting the holder to make an "offer" at the beginning of, or at an early stage during, the negotiations. Therefore, although the language is wide, the problem posed by SFA Section 97A(6)(a)(ii) is not insuperable in our view. It may also be noted that it is doubtful Section 97A(6)(a)(ii) applies to indirect changes in control. With respect, we therefore do not fully agree that the manner in which MAS has been interpreting and applying SFA Section 97A in practice is supported in law. Nevertheless, we do agree that the current point in time at which MAS applies the change of control requirement in SFA Section 97A is in any case too early, and this is all the more so for international transactions where a Singapore entity holding a licence for capital market services (CMS) is merely one of many entities comprising a global financial services business being acquired. We would therefore respectfully submit that, in principle, the most appropriate stage for which MAS' approval should be required under SFA Section 97A is before the buyer actually takes "effective control", i.e. assuming that this is meant as a reference to the time of completion of the purchase transaction. Such an approach would also be aligned with the current provision typically found as a licence condition in a CMS licence. It further follows that we would not recommend that MAS' approval be required at the point when a conditional sale and purchase agreement is signed. We also note that SFA Section 97A(3)(a) technically requires MAS to be satisfied that the applicant "... is a fit and proper person to have effective control of the holder of the capital markets services licence ..." before granting approval, and this supports the notion that the approval exercise is most appropriately undertaken at the stage after signing of a conditional sale and purchase agreement, where regulatory approval is made a condition precedent to completion, which would be in line with the international transaction practice. We also invite MAS to consider applying this same principle to as many change of control procedures in other regulatory regimes administered

		by MAS as feasible, in addition to those under the SFA and the Financial Advisers Act. **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** NIL **Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers.** NIL **Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.** NIL **Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.** NIL **Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.** NIL **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.** NIL

		Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA. NIL **Question 11: MAS seeks comments on the proposal to –** **(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and** **(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** We agree with the proposal in question 11. We however suggest that MAS look into the merits of extending this facility beyond just brokers. We believe that that any person should be entitled to take security in this manner, and that there is no good reason to treat brokers differently from other persons in this respect. We have no strong views on question 12 or question 13, but would recommend that MAS work with the Central Depository Pte Ltd (**CDP**) to expedite the time frame within which CDP is able to process an application to register statutory assignments or charges of scripless securities. Currently, we understand that the time frame for creating a statutory charge or assignment may last as long as 1-3 days depending on whether an "expedited" processing fee is paid. We would suggest that especially if online filing processes can be implemented, the aim should be to reduce this processing time to no more than a couple of minutes at most. Separately to the issue raised by MAS in the Consultation Paper concerning scripless shares, since MAS is looking at Section 130N of the Companies Act, we would like to take the opportunity to invite MAS to review an important issue of principle regarding the scope of the section, which has been a long-standing issue. Such a review would be consistent with the aim of providing clear, certain and efficient methods of granting and taking security over scripless shares. Currently, security over book-entry securities may only be given via statutory security under Section 130N or by giving a common law security under Regulation 23A of Companies (Central Depository System) Regulations (**CDS Regulations**). A statutory security requires the chargor or assignor to be a direct account holder with the CDP or a depository agent, while a common law security under Regulation 23A requires that the chargor and chargee both hold sub-accounts with the same depository agent (or that the chargee be the depository agent through which the chargor holds security). In the current commercial environment, however, the reference in Regulation 23A to a "sub-account holder" as the person being

		authorised to create common law security creates an uncertainty or difficulty in taking common law security over scripless shares. This is in particular because the vast majority of depository agents (apart from a small number of retail brokers) are nominee companies. As such, scripless shares are generally not held in sub-accounts opened directly with depository agents but rather clients hold the securities though custodians, and it is the custodians or even lower-tier subcustodians that actually hold a sub-account with the depository agents. Accordingly, both the clients and the custodian may be several steps removed from the sub-account holder of the scripless securities. What this means in particular is that the client whose shares are to be charged is not a "sub-account holder". The question therefore arises whether a person holding shares indirectly through a custodian which is not a depository agent (where the depository agent is one or more tiers of intermediaries underneath the custodian), and who is therefore technically not a "sub-account holder", can create effective common law security. As Section 130N specifically states that no security over book-entry securities may be taken except in accordance with Section 130N or the regulations made under Section 130P, the concern is that the legal validity of the security granted is at least open to interpretation – which we respectfully submit is not a satisfactory situation, even if some arguments (such as the below) can be made for why such security might be upheld (i.e. it is not the point to show that the security is necessarily ineffective; the question must be whether it is clear that the security is effective). ▪ One possible argument is that a security granted over a custodial account does not involve creating any security interests over book-entry securities at all, and the situation falls outside Section 130N altogether. However, the basis for such a distinction is not clear as there is not, on its face, a material difference between a security held with a custodian and a security held in a sub-account of a depository agent with the CDP. After all, a depository agent's essential function is as a custodian. ▪ Another possible argument is that Regulation 23A should be construed purposively so that the term "sub-account holder" is not limited to a person who has entered into a contract with a depository agent to hold securities in a sub-account but should include any persons whose securities are indirectly held through a subaccount. However, it not entirely clear what the basis for reading such words into Regulation 23A would be.

		In any case, given the fact that scripless securities are held through custodian accounts above a depository agent, it would be both prudent and timely to take the opportunity to confirm and put beyond legal doubt the legal status of security created over scripless shares held through custodian accounts. We would therefore propose that MAS consider widening Section 130N and/or Regulation 23A to make it clear that common law security over scripless shares can effectively be taken in respect of scripless shares held through intermediary custodians (where the custodian is not a depository agent but where the depository agent is one or more tiers of intermediaries underneath the custodian). In making this proposal, we however wish to emphasize that we would not wish to accentuate any doubts or create new uncertainty over current or past practices. We would therefore note that any amendment should expressly provide that they apply retrospectively in a way that would confirm and uphold arrangements entered into previously. On another note, we recommend that Regulation 23C of the CDS Regulations should apply to statutory charges as well as assignments. We would be pleased to meet or have a telephone conference with MAS to elaborate on the above submissions, especially the submission regarding the taking of security over scripless shares. **Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities.** Please see our response to question 11 above. **Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.** Please see our response to question 11 above. **General Comments** NIL
10	Deutsche Bank AG, Singapore Branch ("Deutsche Bank")	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.** NIL

		Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper". NIL **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.** NIL **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** NIL **Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers.** We welcome the definition of material adverse developments. However we seek further clarity around matters affecting the fitness and propriety of the FI's substantial shareholders. What does this mean? **Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.** NIL **Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.** NIL

		Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily. NIL **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.** NIL **Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.** NIL **Question 11: MAS seeks comments on the proposal to –** **(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and** **(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** We welcome the new arrangements for pledging collateral as it makes it operationally easier for CDP-held securities to be pledged. However, we seek further clarity in relation to proposed paragraph 5.4. The proposals do not outline the risk controls in relation to the broker's approval for discharge of collateral. For example, how is the broker to communicate its approval; how will the CDP verify that the instruction was genuine; what happens if there is a mistake and (for example), a certain amount of securities is transferred out and automatically discharged, when it should have continued to be under pledge. **Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities.** NIL **Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.** NIL

		General Comments NIL
11	Moody's Investors Service Singapore Pte Ltd ("Moody's")	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.** NIL **Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper".** NIL **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.** NIL **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** NIL **Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers.** Moody's appreciates the need for MAS to be notified in a timely manner of the matters specified in items (a) to (e) of the proposed section 11C(1). However, Regulated Financial Institutions should be allowed an opportunity to ascertain the nature and scope of the notifiable matters, in order to avoid providing information to MAS that is preliminary or inaccurate if required to be notified "immediately". Therefore, we suggest the timing of the notifications be amended to "as soon as practicable".

		In addition, the requirement to notify MAS of materially adverse developments affecting the "financial soundness or reputation" of the holder or any entity in the group of the holder appears to be unduly broad and could unintentionally capture developments that may, for example, have a reputational impact on an unrelated small group company in another jurisdiction but that will have no bearing on the licence holder in Singapore. We suggest that the notification of such developments on "financial soundness or reputation" should be linked to the license holder's ability to satisfy its obligations under the Securities and Futures (Licensing and Conduct of Business) Regulations ("the Regulations"). Accordingly, we have made the following proposed amendments to the text of the proposed section 11C under the Regulations: **Obligation to notify Authority of certain matters** **11C.**—(1) A holder of the capital markets services licence shall ~~immediately~~ as soon as practicable inform the Authority when the holder becomes aware: *(a)* that it has contravened or likely to contravene, any provisions of any Acts administered, or requirements imposed, by the Authority; *(b)* of any development that affects the ability of the holder to fulfil its obligations under these Regulations that has occurred, or is likely to occur and which the holder has reasonable grounds to believe has materially affected adversely, or is likely to materially affect adversely – (i) the financial soundness or reputation of the holder; (ii) the financial soundness or reputation of any entity in the group of the holder where such development affects the holder; or (iii) such other factors as the Authority may specify by notice in writing; Furthermore, to avoid any ambiguity that the notification obligation under the proposed section 11C extends to entities outside the licence holder's group of companies, we suggest the following addition to the definition of "group": **Definitions** "group", in relation to a holder of the capital markets services licence or an exempt person, means a group of entities comprising the holder and — (a) any of its associates; and (b) any other entity treated as part of the holder or exempt person's group of companies (where the holder is the parent in the group) according to the accounting standards applicable to the holder or exempt person;

		Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs. NIL **Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.** NIL **Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.** NIL **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.** Moody's notes (from section 4.2 of the Consultation Paper) MAS's intention "to provide powers within the SFA, FAA and TCA to make it an offence where Regulated FIs fail to take reasonable care to ensure the accuracy of information submitted to MAS" would "allow MAS to take action against a Regulated FI which persistently furnishes inaccurate information (even if the information is not material) to MAS". Accordingly, to reflect the above, we have made the following proposed amendments to the text of the proposed section 329 of the Securities and Futures Act ("the SFA"): **Duty not to furnish false information to Authority** 329.—(1) Any person who furnishes the Authority with any information under this Act shall use due care to ensure that the information is not false or misleading ~~in any material particular~~. (2) Subsection (1) shall apply only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing of information. (3) Any person who — (a) signs any document lodged with the Authority; or (b) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication

		method or procedure assigned to him by the Authority, shall use due care to ensure that the document is not false or misleading in any material particular. (4) ~~Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.~~ Any person other than an individual which persistently fails to take reasonable care that any information furnished to the Authority under this Act is accurate, and such information is inaccurate, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000. (4A) Any person who furnishes any information which is false or misleading in a material particular to the Authority under this Act shall be guilty of an offence and shall be liable on conviction– (a) in the case of an individual – (i) who committed the offence wilfully, to a fine not exceeding $25,000 or to imprisonment for a term not exceeding 2 years or to both; (ii) who did not commit the offence wilfully, to a fine not exceeding $25,000; or (b) in any other case, to a fine not exceeding $50,000. **Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.** NIL **Question 11: MAS seeks comments on the proposal to – (a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and (b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** NIL **Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities.** NIL **Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.** NIL

		General Comments NIL
12	Peter T. Ng	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.** NIL **Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper".** NIL **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.** NIL **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** NIL **Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers.** NIL **Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs.** NIL **Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory**

		authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC. NIL **Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.** NIL **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.** If the Authority is minded to make it an offence for such failure, I wish to request the Authority to clarify: 1. if the offence for such failure relates only to SFA Form 28 and FAA Form 16 2. the definition of reasonable care, and if the following may be an appropriate definition: *"reasonable care" means how an ordinary skilled personnel exercising and professing to have that special skill discharges his/her duties in similar situations* **Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.** NIL **Question 11: MAS seeks comments on the proposal to –** **(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and** **(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** NIL **Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities.**

		NIL **Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.** NIL **General Comments** NIL
13	Prudential Assurance Company Singapore (Pte) Limited ("PACS")	**Question 1: MAS seeks views on the proposal to require locally incorporated RMOs, locally incorporated RCHs, and ATs to seek MAS' approval prior to appointing their CEOs and directors.** NIL **Question 2: MAS seeks views on the proposal to replace the grounds for removal of CEOs (or Resident Managers in the case of LTCs) and Directors of all Regulated FIs (other than RFMCs, ECFs and EFAs) to a single criterion of not being "fit and proper".** NIL **Question 3: MAS seeks views on the proposal to amend section 97A of the SFA and section 57A of the FAA to require a potential controller to seek MAS' approval only prior to taking effective control of the CMSL or LFA.** NIL **Question 4: MAS seeks views on the proposal to extend similar effective control provisions to locally incorporated RMOs, locally incorporated RCHs, and ATs.** NIL **Question 5: MAS seeks views on the proposal to require Regulated FIs (other than Exempt FIs) to notify MAS as soon as they become aware of any adverse developments that materially affect or are likely to materially affect the FI itself and its group entities, to the extent that the developments materially and adversely affect the FI; as well as matters affecting the fitness and propriety of the FI's substantial shareholders, controllers or key officers.** NIL

		Question 6: MAS seeks views on the proposal to extend sections 150B and 150C of the SFA to AEs, locally incorporated RMOs, locally incorporated RCHs, ACHs, LTRs, AHCs and ATs. NIL **Question 7: MAS seeks views on the proposal to amend the SFA to provide MAS powers to grant approval to a foreign regulatory authority to appoint an agent to inspect a CMSL, Exempt FI, RFMC, ECF, AT, AE, locally incorporated RMO, LTR, ACH, locally incorporated RCH or AHC.** NIL **Question 8: MAS seeks views on the proposal to require AEs, ACHs, LTRs and AHCs to obtain MAS' approval for the appointment of their auditors on an annual basis. MAS will also have the powers to direct these entities to remove their auditors where the auditors are unable to discharge their duties satisfactorily.** NIL **Question 9: MAS seeks views on the proposal to make it an offence for failure by a Regulated FI to take reasonable care that any information furnished to MAS is accurate.** Prudential Assurance Company Singapore (Pte) Limited suggests to insert the word "material" so that the sentence will read as "Regulated FI to take reasonable care that any material information furnished to MAS is accurate." **Question 10: MAS seeks views on the proposal to introduce similar provisions for service of documents by registered post and electronic means in the SFA and TCA, and by electronic means in the FAA.** NIL **Question 11: MAS seeks comments on the proposal to –** **(a) allow the automatic charging of securities when they are moved to the sub-balance of a CDP direct account that is pledged to a broker; and** **(b) allow the automatic discharging of securities when they are transferred out of the sub-balance, with the broker's approval.** NIL

		Question 12: MAS also seeks comments on the proposal to remove the requirement for a witness signature on Form I for charging securities. NIL **Question 13: MAS seeks views on a feasible timeline to implement the proposed changes to create sub-balances within CDP direct accounts and allow the automatic charging and discharging of security interest.** NIL **General Comments** NIL