

**RESPONSE TO
FEEDBACK RECEIVED**

August 2015

**Consultation Paper on
Proposed Amendments
to the Securities and
Futures Act (Part XII)**

MAS

Monetary Authority of Singapore

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1 Preface

1.1 On 11 February 2015, MAS issued a consultation paper on proposed amendments to the Securities and Futures Act (Cap. 289) (“SFA”), to complete the expansion of its scope to regulate over-the-counter (“OTC”) derivatives as well as other amendments to strengthen MAS’ enforcement regime, amongst others.

1.2 The consultation period closed on 24 March 2015 and MAS would like to thank all respondents for their contributions. MAS has considered carefully the feedback received. As some of the proposals require further study, MAS will release our response to feedback in phases.

1.3 This set of responses addresses feedback received on the proposed amendments to Part XII of the SFA, as set out under section 4.2 of the consultation paper. The list of respondents who submitted their feedback to the proposed amendments under section 4.2 of the consultation paper is set out in the Annex. Comments that are of wider interest, together with MAS’ responses, are set out below.

2 Amendments to Part XII (Market Conduct) of the SFA

2.1 Revision of Provision Prohibiting False & Misleading Statements

2.1.1 A few respondents expressed clear support for MAS’ proposal to clarify the policy intent behind section 199 of the SFA, i.e. that the term “material” in section 199 is attached to the word “particular” and describes the false and misleading particular vis-à-vis the rest of the statement. It does not refer to the price impact of the disclosure.

2.1.2 However, there was one respondent that queried the underlying principle behind MAS’ interpretation and whether a false or misleading statement that has little or no price effect would satisfy the requirements under limbs (a), (b) and (c) of section 199.

2.1.3 Some of the respondents also queried the mode in which MAS proposes to make clear that there is no requirement of material price impact under section 199 and whether the clarifications would be made by way of guidelines or a new definition in the SFA.

MAS’ Response

2.1.4 Section 199 of the SFA was derived from section 999 of Australia’s Corporations Act 2001. Australian court decisions interpreting section 999 indicate that the legislative

policy behind the Australian provision was to ensure the accuracy of information that is disseminated to the market. The focus was on the misleading nature of the disclosure, and not on the extent of its impact on the market. In other words, liability is established as long as the false or misleading statement had a likely tendency to influence the market price. Similarly, the effect that must be shown for section 199 is not a material effect on the price of the securities, but whether the false or misleading particular would likely result in either an inducement to trade (under limbs (a) and (b)) or one of the stated effects on the price of the securities (limb (c)) (*i.e.* raising, lowering, maintaining or stabilising the price).

2.1.5 MAS intends to amend the current structure of section 199 such that it is clearer that the term “material” is meant to be descriptive of the false or misleading particular, and not the price impact of the misleading disclosure or its effect on trading decision.

2.2 Definition of the phrase “persons who commonly invest in securities”

2.2.1 Most respondents supported MAS’ proposal to provide a definition as to what constitutes “*persons who commonly invest in securities*” (“Common Investor”) under sections 215 and 216 of the SFA. The feedback received pertained mainly to the qualities that a Common Investor should possess. Specifically, some of the suggestions made were that a Common Investor should possess some basic financial knowledge and be able to make reasoned logical investment decisions. A few respondents suggested that it would be helpful for the proposed guidelines to clarify whether the product knowledge or trading history of an individual, in relation to the different product types, would have an impact on the determination of a Common Investor.

2.2.2 One respondent further proposed that MAS should amend the phrase “*persons who commonly invest in securities*” to “*common investor*”, as the present statutory phrasing is not accurate. The respondent was of the view that the phrase, “*persons who commonly invest in securities*” connotes a person who often invests in securities, as opposed to the average investor.

MAS’ Response

2.2.3 MAS will take into account the feedback received regarding the qualities that the Common Investor should possess when drafting the guidelines. With regard to the suggestion to amend the term “*persons who commonly invest in securities*” to a “*common investor*” in order to connote an average investor, MAS will retain the former term as MAS will provide a new definition of “*persons who commonly invest in*

securities” in section 214 of the SFA. The new definition will make clear that “persons who commonly invest” refers to one or more members of the public who deals in securities on a regular basis. MAS will introduce guidelines after the SFA has been amended to provide guidance in relation to the interpretation of section 214 of the SFA. MAS did not think it was necessary to amend the term “*persons who commonly invest in securities*” to a “*common investor*” because it still does not provide sufficient clarity on the definition of the common investor.

2.3 Revision of Ceiling for Civil Penalty Quantum and Priority for MAS’ Civil Penalty Claims

2.3.1 Respondents were supportive of the two policy proposals to:

- (a) amend the civil penalty ceiling to be the higher of 3 times the profit gained or loss avoided or S\$2 million, for all market misconduct contraventions under Part XII of the SFA; and
- (b) to confer priority for MAS’ civil penalty claims over private debts that subsequently accrue after contravention.

MAS’ Response

2.3.2 MAS intends to proceed with these proposals.

3 Legislative Amendments under Part XII (Market Conduct) of the SFA

3.1 MAS will be issuing a consultation paper on the relevant legislative amendments to Part XII of the SFA.

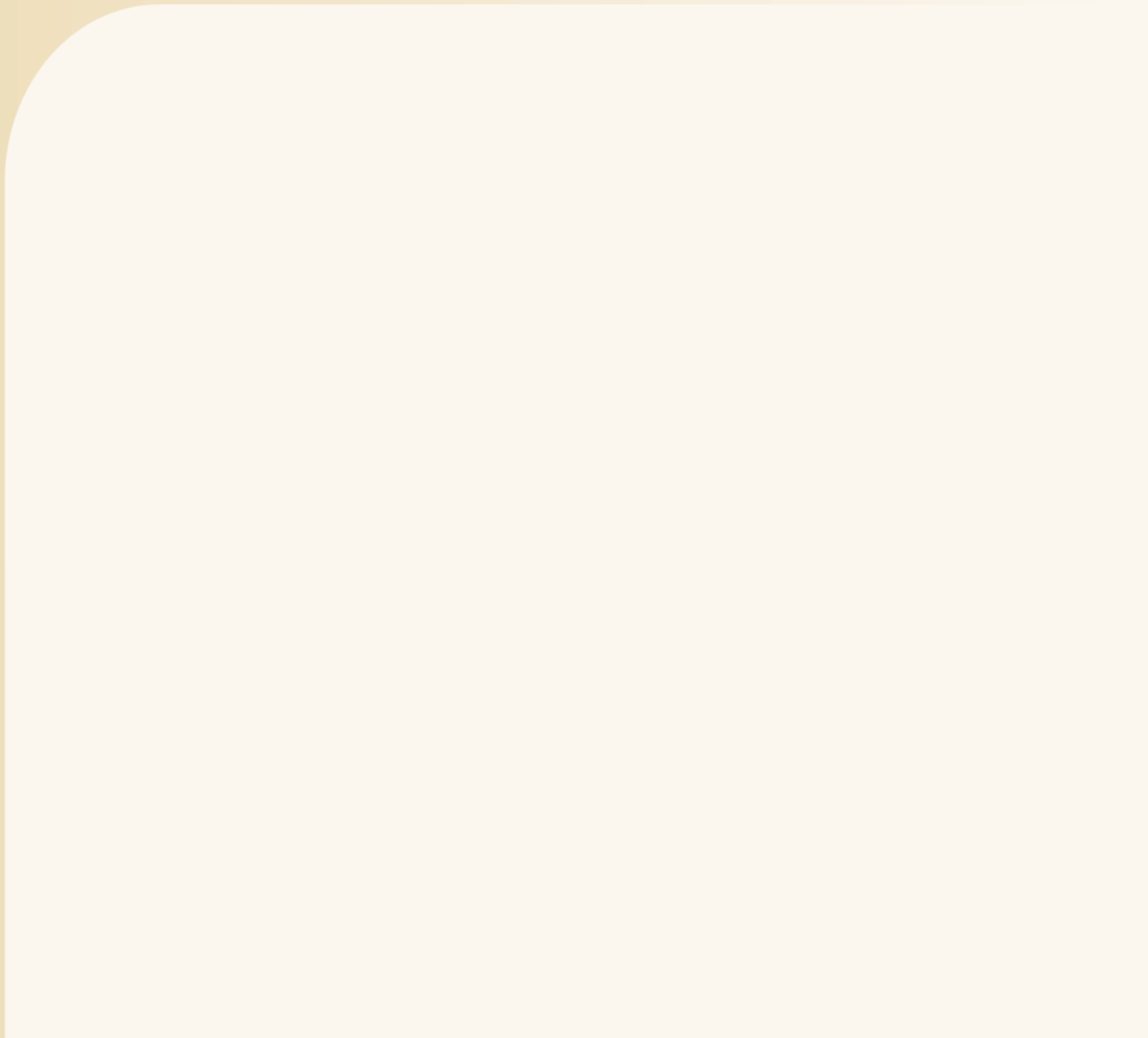
MONETARY AUTHORITY OF SINGAPORE

24 August 2015

Annex

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

1. FIA Asia
2. Asia Securities Industry and Financial Markets Association (ASIFMA)
3. Clifford Chance LLP
4. International Swaps and Derivatives Association (ISDA)
5. United Overseas Bank (UOB)
6. RHTLaw Taylor Wessing LLP
7. Alternative Investment Management Association (AIMA)
8. WongPartnership LLP
9. Singapore Exchange Limited



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