

RESPONSE TO FEEDBACK RECEIVED

November 2016

Response to Feedback Received – Amendments to the Securities and Futures Act (Cap. 289) and Related Regulations to Implement Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets

MAS

Monetary Authority of Singapore

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1 Preface

1.1 On 21 July 2014, MAS issued a consultation paper setting out a package of proposals to enhance regulatory safeguards for investors in the capital markets (“July 2014 consultation paper”). The July 2014 consultation paper also sought feedback on proposed amendments to the Securities and Futures Act (Cap. 289) (“SFA”) and subsidiary legislation issued pursuant to the SFA to implement the policy proposals should MAS proceed with them.

1.2 On 22 September 2015, MAS responded to feedback received on policy proposals contained in Parts I and III of the July 2014 consultation paper¹ (“September 2015 response paper”) and announced that it will proceed with proposals to:

- (a) Extend the scope of the SFA to two types of non-conventional investments products, namely precious metals buy-back arrangements and collectively-managed investment schemes, such that investors in these products will be accorded the same regulatory safeguards as investors in capital markets products; and
- (b) Refine the accredited investor (“AI”) and institutional investor (“II”) classes under the SFA and the Financial Advisers Act (Cap. 110) (“FAA”), to better reflect categories of non-retail investors based on their wealth or income and financial knowledge, respectively. An opt-in regime will also be introduced to provide investors who meet the AI thresholds the option to benefit from regulatory safeguards afforded to retail investors.

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

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

¹ The July 2014 consultation paper, and the September 2015 response paper is accessible at: <http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2014/Consultation-on-Proposals-to-Enhance-Regulatory-Safeguards-for-Investors-in-the-Capital-Markets.aspx>.

1.4 The Bill incorporates feedback received on proposed amendments to the SFA in the July 2014 consultation paper, where MAS has agreed with the feedback.² MAS will also take into account feedback received in finalising the supporting subsidiary legislation to be gazetted should the Bill be passed by Parliament and enacted into law. Adequate lead time will be provided to affected persons to comply with the legislative changes before they take effect.

1.5 Comments that are of wider interest, together with MAS' responses are set out below.

2 Part I: Capital Markets Regulatory Safeguards for Investors in Non-Conventional Investment Products

2.1 To extend capital markets regulatory safeguards to investors in two types of non-conventional investments products, MAS proposed to amend in section 2(1) of the SFA:

- (a) the definition of "*debenture*", to empower MAS to prescribe a product or class of products as a "*debenture*". This would allow MAS to prescribe buy-back arrangements involving gold, silver and platinum ("*precious metals*") as a "*debenture*" in subsidiary legislation; and
- (b) the definition of "*collective investment schemes*" ("*CIS*"), such that there need not be pooling of participants' contributions and scheme profits for an arrangement to be regarded as CIS, so long as the scheme property is managed as a whole by a manager.

2.2 MAS did not receive any comments on the proposed prescription powers in 2.1(a). Responses received were in respect of clarifying the arrangements that would be caught using the proposed prescription powers, if passed by Parliament. MAS has addressed this in paragraphs 3.3 to 3.7 of its September 2015 response paper and will reflect its policy intent in subsequent subsidiary legislation accordingly.

2.3 In respect of 2.1(b), several respondents highlighted the need to ensure that the revised CIS definition did not inadvertently disrupt legitimate commercial activities, such as the ordinary sale of real estate.

² The list of respondents can be found in Annex A of the September 2015 response paper.

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2.4 In line with MAS' intent to bring schemes that are in essence collective investments within the CIS regulatory regime, the Bill provides for specific exclusions from the CIS definition, arrangements that are entered into predominantly for the use or enjoyment of personal property (i.e. consumption-based arrangements). In determining the predominant purpose of arrangements, due regard should be given to the substance and practical realities of the arrangements as contemplated between the scheme participants and the scheme manager. Should there be a need to provide for further exclusions from the CIS definition in the future, MAS can utilise its existing powers do so by way of Notification published in the *Gazette*.

3 Part III: Refinements to Non-Retail Investor Classes Regime under the SFA and FAA

3.1 Institutional Investors ("IIs")

3.1.1 MAS proposed amendments to the definition of IIs in section 4A(1)(c) of the SFA to, amongst others, include (i) supranational governmental organisations and (ii) sovereign wealth funds. For the former, one respondent highlighted that the prescribed list of entities that MAS had proposed would need to be updated regularly to include new supranational governmental organisations that may be formed. On the latter, another respondent requested for MAS to prescribe a list of such entities, citing possible practical difficulties in getting a declaration from prospective investors that they meet the new criteria.

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3.1.2 MAS agrees that the prescribed list of supranational governmental organisations will need to be updated from time to time.³ For operational efficiency, MAS will be empowered to prescribe a list of entities by way of Regulations.

3.1.3 Determination of whether an entity is a sovereign wealth fund, and thus fall within the amended II definition, would require a case-by-case assessment of the structure and set up of individual entities. MAS is of the view that persons who intend to rely on available exemptions under the SFA or FAA when dealing with an investor as an II would be in the best position to make this assessment as part their due diligence

³ For example, MAS notes that the Asian Infrastructure Investment Bank ("AIIB"), a multilateral development bank which was launched in January 2016, should be added to the prescribed list that MAS had consulted on in July 2014.

processes. As such, MAS will not be prescribing an exhaustive list of entities in legislation for this purpose.

3.2 Accredited Investors (“AIs”)

3.2.1 Comments received on MAS’ proposed amendments to the AI definition and the proposed opt-in regime were mainly in relation to the draft Securities and Futures (Classes of Investors) Regulations. In particular, respondents sought clarity on implementation details for the opt-in regime and the transitional arrangements that will apply in respect of existing AI clients.

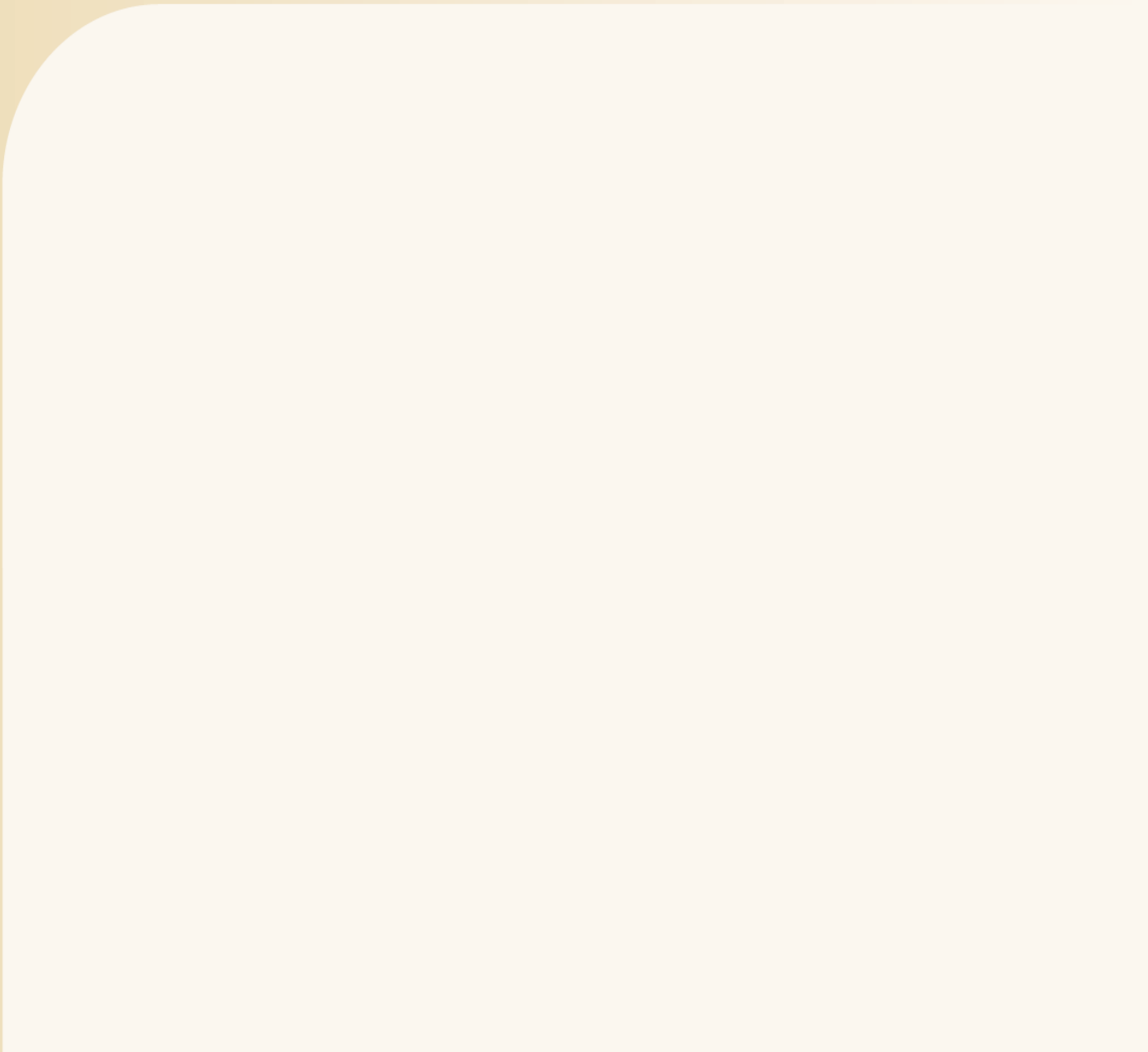
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3.2.2 MAS has clarified issues relating to the implementation details and transitional arrangements in its September 2015 response paper and will take these into account as we finalise the relevant Regulations. The necessary modifications will also be made to allow for an “opt-out” approach for existing AI clients who continue to be AI-eligible under the revised AI definition, subject to them being notified of their right to opt out of AI-status and the implications of their choice.⁴ The final Regulations will be gazetted at a later date, and adequate lead time will be provided for affected persons to comply with the relevant requirements before they take effect.

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⁴ See paragraphs 6.12 – 6.15 of the September 2015 response paper.



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