

CONSULTATION PAPER

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Policy Consultation on Amendments to the SFR and the FAR

MAS

Monetary Authority of Singapore

AMENDMENTS TO THE SECURITIES AND FUTURES (LICENSING AND CONDUCT OF BUSINESS) REGULATIONS AND FINANCIAL ADVISERS REGULATIONS

PREFACE

MAS is conducting a review of the Securities and Futures (Licensing and Conduct of Business) Regulations (“SFR”) and the Financial Advisers Regulations (“FAR”) to achieve greater consistency in our regulations, and enhance the flexibility of MAS’ regulatory framework and enforcement powers. This policy consultation paper sets out a number of proposed changes to the SFR and FAR as a result of an on-going review of the licensing and business conduct requirements.

2 MAS invites interested parties to forward their views and comments on the issues outlined in this consultation paper. Parties who do not wish to comment on all of the issues may confine their responses to the specific sections that are of interest. Written comments should be submitted to:

Capital Markets Intermediaries Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117
Email: lcb_far_2009@mas.gov.sg
Fax: 6225 1350

MAS would like to request for all comments and feedback to be submitted by 15 July 2009.

3 Please note that all submissions received may be made public unless confidentiality is specifically requested for the whole or part of the submissions.

SECTION 1: REGISTER OF INTEREST IN SECURITIES

1 Under the SFR and FAR, representatives of Capital Markets Services (“CMS”) licence holders conducting the regulated activities of dealing in securities, fund management or advising on corporate finance advisory, and representatives of licensed financial advisers (“FAs”) providing financial advisory services in respect of securities are required to maintain a register of their interests in securities (the “Register”), using a prescribed form (Form 15 of the SFR and Form 12 of the FAR) and afford MAS full access to the Register.

2 Currently, these licensed representatives are also required to notify MAS of the place where the Register is kept using a prescribed form (Forms 9 and 10 of the SFR and Forms 4, 9 and 13 of the FAR). MAS proposes to remove this notification requirement in relation to representatives to reduce the administrative burden on the industry. Instead, MAS proposes to require principal companies to maintain records of the place(s) where their representatives keep the Register. Principal companies are required to produce these records for MAS’ inspection upon the Authority’s request.

3 There is no change in the requirement for the principal company and its representatives to maintain and produce the Register for MAS’ inspection upon the Authority’s request.

MAS seeks views on the proposal to:

- **remove the requirement for relevant licensed representatives to notify MAS of the place where the registers of their interests in securities are kept; and**
- **require principal companies to maintain records of the place(s) where the registers of their representatives’ interests in securities are kept.**

SECTION 2: CUSTOMER'S MONEYS AND ASSETS

- 4 MAS proposes to amend relevant provisions in Part III of the SFR to:
- (a) more clearly set-out that a CMS licence holder cannot commingle customers¹ moneys with those belonging to itself; its employees, representatives; or its related corporations' proprietary funds.
 - (b) align the definition of "customer's assets" in the SFR with the definition in the Securities and Futures Act ("SFA"). The SFR defines "customer's assets" as securities and assets (other than money) that are beneficially owned by a customer of the holder. In contrast, "customer's assets" in the SFA refers to any asset (other than money) deposited with a CMS licence holder in the course of its business, for which the CMS licence holder is liable to account to its customer, and any other assets accruing therefrom, regardless of whether the customer is the beneficiary owner. MAS proposes to adopt the broader definition of customer's assets in the SFA to take into account circumstances where the customer is not the beneficial owner of the assets.

MAS seeks views on the proposed alignment of the definition of "customer assets" between the SFA and SFR, in particular on any practical difficulties that may arise.

SECTION 3: LICENSING EXEMPTION FOR DEALING IN SECURITIES AND LEVERAGED FOREIGN EXCHANGE TRADING

5 Pursuant to paragraph 2(a) in the Second Schedule of the SFR, a person carrying on business in dealing in securities for his own account is exempted

¹ In Regulation 15 of the SFR, customers are defined to exclude the licence holders' proprietary account; its officer, employee or representative; and a related corporation, where the account belongs to, and is maintained wholly for the benefit of the related corporations.

from holding a CMS licence. MAS proposes to extend this exemption to persons who deal or trade for the account of related corporation(s). This would bring the exemption closer into alignment with the existing licensing exemption for the activities of trading in futures contracts and leveraged foreign exchange trading.

6 In addition, MAS proposes to clarify that the licensing exemption for dealing or trading for a related corporation would only apply where the account belongs wholly and is maintained solely for the benefit of the related corporation. This clarification applies to the licensing exemptions for the activities of dealing in securities, trading in futures contracts and leveraged foreign exchange trading pursuant to paragraphs 2(a), 3(a) and 4(a) in the Second Schedule to the SFR, respectively. This is in line with MAS' intent for the exemption to apply only when non-customer funds are involved.

MAS seeks views on the proposals to:

- **extend licensing exemptions for dealing in securities to persons who trade for the account of related corporations; and**
- **clarify that the licensing exemptions for dealing in securities, trading in futures contracts and leveraged foreign exchange trading for the account of related corporation(s), the account should belong to and be maintained solely for the benefit of the related corporation.**

SECTION 4: SFR GENERAL PENALTY

7 The current general penalty provision in Regulation 55 of the SFR sets the maximum fine at S\$25,000 for penalties not specified elsewhere in the SFR. This is in contrast to the maximum fine of S\$50,000 specified under the equivalent general penalty provision in the Securities and Futures (Financial

and Margin Requirements) Regulations (“FMR”). MAS proposes to increase the maximum penalty under the general penalty provision in the SFR from S\$25,000 to S\$50,000, to align with the maximum penalty under the general penalty provision under the FMR.

SECTION 5: FORMS REQUIRED TO BE MAINTAINED UNDER THE SFR AND FAR

8 Currently, the SFR and FAR stipulate requirements for holders of CMS licence and Financial Adviser’s licence to maintain information in respective prescribed forms on an ongoing basis. MAS clarifies that for forms that do not have to be lodged with MAS, the completed forms, or copies of the completed forms, are to be maintained in Singapore. This would aid to ensure prompt production of these documents upon MAS requests.



Monetary Authority of Singapore