RESPONSE TO FEEDBACK RECEIVED

1 October 2018

Response to Feedback Received – Draft Regulations Pursuant to Securities and Futures Act

Monetary Authority of Singapore

Contents

1 Preface

1.1 On 26 May 2017, MAS issued the second of two consultation papers on draft regulations pursuant to the Securities and Futures Act ("SFA"). The draft regulations will operationalise the amendments to the SFA under the Securities and Futures (Amendment) Act 2017 ("SF(A)A"). The amendments give effect to policy proposals aimed at ensuring that the capital markets regulatory framework in Singapore keeps pace with market developments and is aligned to international standards and best practices.

1.2 The consultation period closed on 23 June 2017, and MAS would like to thank all respondents for their contributions. The list of respondents is provided in **Annex A**.

1.3 MAS has considered carefully the feedback received, and will incorporate them where it has agreed with the feedback. Comments that are of wider interest, together with MAS' responses, are set out below.

2 Amendments to Securities and Futures (Licensing and Conduct of Business) Regulations and Other Proposals

2.1 Amendments to the Securities and Futures (Licensing and Conduct of Business Regulations

2.1.1 MAS sought comments on the proposed amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations ("SF(LCB)R"). The amendments were primarily to introduce business conduct requirements and licensing exemptions for dealing in over-the-counter ("OTC") derivatives contracts, and enhanced requirements for the protection of customers' moneys and assets held by all capital markets intermediaries. Amendments were also proposed to support changes to the product and regulated activities definitions under the SFA. The proposed amendments to the SF(LCB)R will effect the revised proposals after considering the feedback received.

Business conduct and licensing for dealing in OTC derivatives contracts

(a) Applicability of risk mitigation requirements

2.1.2 Two respondents sought clarity on the applicability of risk mitigation requirements ("RMRs") for banks, merchant banks and finance companies dealing in non-centrally cleared derivatives contracts that were (i) not booked in Singapore; or (ii) with private banking clients.

MAS' Response

2.1.3 RMRs only apply to non-centrally cleared derivatives contracts that are booked in Singapore.

2.1.4 RMRs seek to instil robust risk management in intermediaries when transacting in non-centrally cleared derivatives contracts. For instance, RMRs help to promote legal certainty of the contract and facilitate timely dispute resolution for the parties to the contract. Given the intent of RMRs, MAS is of the view that RMRs should apply when banks, merchant banks and finance companies deal in non-centrally cleared derivatives contracts with all accredited investors, including those who are private banking clients. MAS recognises that the form in which RMRs take may differ for individual or private banking clients. For instance, a written trading relationship documentation will typically be the trading account agreement for individual or private banking clients, and a portfolio reconciliation may take the form of a statement of account provided to inform such clients of their trading positions and assets.

(b) Recordkeeping requirements for OTC derivatives contracts

2.1.5 One respondent sought clarifications on whether the record keeping requirements apply to both trades that are booked or traded in Singapore. A few respondents also asked whether intermediaries have the discretion to determine the matters that are regarded as part of the terms and conditions of OTC derivatives contracts to which the record keeping requirements will apply.

MAS' Response

2.1.6 The record keeping requirements apply to OTC derivatives contracts that are either traded or booked in Singapore.

2.1.7 MAS recognizes that different classes of OTC derivatives contracts may have different trading practices and documentation. As such, MAS does not intend to prescribe the specific matters which must be included in the terms and conditions of OTC derivatives contracts.

(c) Exemption for OTC derivatives and/or futures broker

2.1.8 One respondent queried if a holder of a Capital Markets Services ("CMS") licence in a regulated activity other than dealing in OTC derivatives contracts or futures contracts can concurrently be exempt under paragraph 3(1)(d) or 3A(1)(d) of the Second Schedule to the SF(LCB)R if the entity is able to fulfil the exemption conditions in that paragraph.

MAS' Response

2.1.9 The exemption is not intended for an entity that already holds a CMS licence. For instance, a licensed fund management company that has a central dealing function in OTC derivatives contracts will be required to hold a CMS licence in dealing in capital markets products that are OTC derivatives contracts. The licensed fund manager will not be allowed to rely on the exemption. Such an approach is consistent with that taken for

other licensing exemptions, such as those for corporate finance advisory entities[1] and registered fund management companies[2].

(d) Exemption for remote OTC derivatives clearing member

2.1.10 Respondents were generally supportive of the proposal to exempt a remote clearing member which clears OTC derivatives contracts on Singapore-based central counterparties from the requirement to hold a CMS licence, subject to certain conditions. One respondent requested that MAS align the conditions to those that are imposed on remote clearing members which clear futures contracts, in particular to include the condition that a remote clearing member is not allowed to have an affiliate in Singapore that carries on business in financial services, so as to mitigate the risk of hollowing out Singapore-based clearing participants ("affiliate condition").

MAS' Response

2.1.11 MAS agrees that the conditions to the two exemptions should be aligned, and will therefore subject remote clearing members who are clearing OTC derivatives contracts to the affiliate condition.

(e) Inter-dealer brokers dealing in commodity derivatives

2.1.12 Some respondents sought clarifications on whether inter-dealer brokers which match trades in OTC commodity derivatives and/or block futures commodity contracts for expert, institutional or accredited investors will be considered as an intermediary or operating a market.

MAS' Response

2.1.13 Inter-dealer brokers which match trades between many buyers and many sellers in any capital markets products will be considered to be operating an organised market[3]. There are however exemptions available specifically for inter-dealer brokers that match only trades in OTC commodity derivatives or block futures commodity contracts where

[1] Persons exempted from holding a CMS licence to carry on business in advising on corporate finance under Paragraph 7(1)(b) of the Second Schedule to the Regulations.

[2] Persons exempted from holding a CMS licence to carry on business in fund management under Paragraph 5(1)(i) of the Second Schedule to the Regulations.

[3] As defined in the SF(A)A.

the buyers and sellers are expert, institutional or accredited investors ("market exemption")[4]. Inter-dealer brokers which fall under market regulation, including those relying on the market exemption, will be exempt from holding a CMS licence in respect of any regulated activity that is solely incidental to its operation of the market.

(f) Transition period for intermediaries dealing in OTC derivatives contracts

2.1.14 One respondent queried whether an entity which currently deals in OTC derivatives contracts that are not currently within the ambit of the SFA (e.g. interest rate or commodity OTC derivatives contracts) would be able to expand its activities into OTC derivatives contracts referencing the existing asset classes (e.g. bond OTC derivatives contracts) under the SFA during the two-year transition period.

MAS' Response

2.1.15 An entity which, prior to commencement of the SF(A)A, deals solely in OTC derivatives contracts referencing the new asset classes that will be brought into the scope of the revised SFA ("New OTC derivatives contracts") will be given two years from the commencement date to apply for a CMS licence (for an entity which is currently not regulated by MAS), vary its CMS licence (for an existing CMS licensee[5]) or submit a notification to MAS (for a bank, merchant bank or finance company exempt from holding a CMS licence to conduct regulated activities under the SFA[6]). Where an application for or variation of a CMS licence is required, the entity will be allowed to continue dealing in the New OTC derivatives contracts unless its application or variation is rejected by MAS. An entity which is required to submit a notification to MAS must do so within the transition period.

2.1.16 The transition period applies only to dealing in New OTC derivatives contracts. If the entity referred to in paragraph 2.1.15 intends to deal in OTC derivatives contracts referencing the existing asset classes under the SFA ("Existing OTC derivatives

[4] Please refer to MAS response to feedback received on Consultation Paper I on Draft Regulations Pursuant to the Securities and Futures Act (link) issued on 28 September 2018 for more information on the market exemption

[5] Holding a CMS licence for a regulated activity other than dealing in OTC derivatives contracts.

[6] Exempt from holding a CMS licence to conduct regulated activities under section 99(1)(a), (b) or (c) of the SFA.

contracts")[7], it will have to comply with the existing licensing requirements. The entity will need to apply for and be granted a CMS licence or seek MAS' approval for a variation of the CMS licence prior to commencement of its dealing in Existing OTC derivatives contracts, or submit a notification no later than 14 days prior to commencement of its dealing in Existing OTC derivatives contracts, as the case may be.

2.1.17 If an entity already holds a CMS licence for, or has notified MAS that it is dealing in Existing OTC derivatives contracts prior to commencement of the SF(A)A, it will be allowed to commence dealing in the New OTC derivatives contracts, without having to vary its CMS licence or submit further notification to MAS (as the case may be) after the SF(A)A comes into effect.

2.1.18 For an entity which starts dealing in OTC derivatives contracts (whether New or Existing OTC derivatives contracts) only after commencement of the SF(A)A, it will have to apply and be granted a CMS licence or seek MAS' approval for a variation of the CMS licence prior to commencement of dealing, or submit a notification no later than 14 days prior to commencement of dealing, as the case may be.

2.1.19 Please refer to the flowcharts in Annex 1 for further guidance on the OTC derivatives licensing requirements for unregulated entities; existing CMS licensees; and banks, merchant banks and finance companies conducting regulated activities under the SFA.

Protection of customers' moneys and assets

(g) Separate trust accounts for customers' transactions in unlisted derivatives products

2.1.20 One respondent sought clarification on whether capital markets intermediaries are permitted to commingle both retail and non-retail customers' moneys received for unlisted derivatives transactions in the same trust account.

MAS' Response

2.1.21 With the enhanced requirements, moneys received from or on account of retail customers in relation to unlisted derivatives transactions are subject to more safeguards

[7] For example, equity or bond-based OTC derivatives contracts.

than moneys received from or on account of non-retail customers. For example, intermediaries are required to deposit retail customer moneys received for unlisted derivatives transactions only in a trust account maintained with a licensed bank in Singapore and are not allowed to use such customer moneys for the intermediaries' own hedging activities or to advance such customer moneys to any other entity. Intermediaries (other than those who are members of an approved clearing house or a recognised clearing house) may deposit retail and non-retail customer moneys received for unlisted derivatives transactions in the same trust account if they apply all the additional safeguards to all customer moneys in that trust account.

(h) Monthly computation of customers' assets

2.1.22 One respondent highlighted practical difficulties in completing the monthly computation of customers' assets by noon of the business day following the month end, as certain information (e.g. balance of units in an unlisted collective investment scheme) may not always be immediately available at month end. The respondent suggested MAS to consider allowing intermediaries to complete the computation "promptly", instead of by noon of the business day following the month end.

MAS' Response

2.1.23 Where the information required for the monthly computation is not available at the month end, MAS will allow capital markets intermediaries to complete the computation no later than the business day following the day on which the information required for the computation becomes available.

(i) Disclosure to clients on arrangements concerning customer's moneys and assets

2.1.24 A few respondents sought clarifications on the circumstances under which a holding chain would exist and the specific risks arising from the existence of a holding chain that should be disclosed to customers.

MAS' Response

2.1.25 A holding chain exists when an intermediary deposits its customers' moneys and/or assets with another entity for purposes such as safekeeping (e.g. in a trust or custody account with a bank or custodian) or transacting in capital markets products (e.g. a broker). That entity could in turn deposit the customers' moneys and/or assets with another custodian or broker (e.g. for customers' transactions on foreign exchanges). In

such instances, the intermediary will be required to disclose to its customer the risks associated with the existence of a holding chain. One example is the risk that the customers may not be able to recover, or may face a delay in the recovery of, their moneys or assets which are held by an entity within the holding chain if that entity goes into liquidation or winding up.

Other proposals

(j) Record keeping when dealing with accredited investors[8]

2.1.26 Respondents were generally supportive of the proposal to extend the requirement to maintain records of powers of attorney authorising the intermediaries or their representatives to operate a customer account, to include a customer who is an accredited investor. MAS will therefore proceed with the proposal.

(k) Limit on use of title transfer collateral arrangements to customers who are accredited, institutional or expert investors

2.1.27 MAS will proceed with the proposal to limit the use of title transfer collateral arrangements to customers who are accredited, institutional or expert investors as there were no objections received from respondents. MAS has also fine-tuned the drafting of the relevant regulations based on the feedback received.

(l) Broadening exemptions available when dealing with accredited and/or institutional investors to include expert investors

2.1.28 MAS did not receive any objection on the proposal to broaden the exemptions[9] currently available to intermediaries when they deal with accredited and/or institutional investors to include expert investors. MAS will therefore proceed with the proposal.

(m) Lowering of base capital requirement for certain holders of a CMS licence

2.1.29 MAS sought views on removing the $250,000 base capital requirement category for holders of a CMS licence which deal in securities or trade in futures contracts. The proposal took into consideration that a holder of a CMS licence which meets the criteria

[8] Regulation 39(2) of the SF(LCB)R.

[9] Such as the exemptions relating to requirements on lending of customers' specified products under Regulation 33(3) and provision of statements of account to customers under Regulation 40(1A)(*b*) of the SF(LCB)R .

for the $250,000 base capital requirement should also be able to meet the criteria for the $50,000 base capital requirement.

2.1.30 Two respondents supported the proposal. Three respondents expressed concerns that the $50,000 base capital requirement category could give rise to the entry of more holders of a CMS licence with minimal financial resources, and might pose reputational risks to the industry at large if these licensees had lower business conduct standards.

MAS' Response

2.1.31 On 1 November 2016, MAS had lowered the base capital requirement for certain dealing CMS licensees from $250,000 to $50,000 provided that such licensees do not handle, hold or accept customer moneys, assets, or positions, do not act as principal in transactions with investors and will only be permitted to deal with accredited, institutional or expert investors. Such licensees pose lower business conduct or systemic risks given their limited risk profile.

2.1.32 As there was no feedback received on entities which meet the criteria for $250,000 base capital requirements but are unable to meet the criteria for $50,000 base capital requirement, MAS will proceed to remove the $250,000 base capital requirement category.

3 New Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations[10]

3.1 Amendments consequential to the SF(A)A

3.1.1 MAS consulted on amendments to the Securities and Futures (Offers of Investments)(Shares and Debentures) Regulations 2005 ("SF(OI)(SD)R") for the purposes of implementing changes to Part XIII of the SFA, namely:

(i) extending the prospectus requirements to cash-settled securities-based derivatives contracts;

(ii) providing appropriate exemptions to exempt certain cash-settled securities-based derivatives contracts from the prospectus requirement where the underlying is listed and where disclosure requirements apply to the contracts; and

(iii) collapsing the prospectus requirements for securities and units of business trusts in Division 1 and Division 1A of Part XIII into Division 1 of Part XIII.

MAS has now combined the requirements under the SF(OI)(SD)R and Securities and Futures (Offers of Investments) (Business Trusts) (No. 2) Regulations 2005 ("SF(OI)(BT)R") into the new Securities and Futures (Offers of Investments)(Securities and Securities-Based Derivatives Contracts) Regulations ("SF(OI)(SSDC)R").

(a) Scope of Part XIII

3.1.2 Some respondents asked whether the scope of "securities-based derivatives contracts" would include OTC derivatives, and if exemptions could be granted to market makers. Another respondent asked for confirmation on whether an offer for contracts for differences ("CFDs") with shares underlying would be exempted from the prospectus requirement. Some respondents noted that the prospectus requirement should not apply

[10] MAS has amended the name of the Regulations from the "Securities and Futures (Offers of Investments) (Shares, Debentures and Business Trusts) Regulations" to "Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations" to more accurately reflect the scope of the Regulations, which covers both securities and securities-based derivatives contracts.

to securities-based derivatives contracts with securities indices as the underlying and also futures contracts. One respondent also suggested having a schedule of prospectus disclosure requirements in the SF(OI)(SSDC)R tailored for an offering of securities-based derivatives contracts.

MAS' Response

3.1.3 OTC derivatives contracts with securities as the underlying e.g. CFDs on shares, will fall under "securities-based derivatives contracts", an offer of which will be subject to the prospectus requirement. An offer of securities-based derivatives contracts by market makers will be exempted from the prospectus requirement if it can use existing prospectus exemptions (e.g. small offers or private placement exemptions), or the new prospectus exemption for cash-settled securities-based derivatives contracts described in paragraph 3.1.4 below.

3.1.4 The new section 273(1)(g) of the SFA[11] will provide an exemption for an offer of securities-based derivative contracts (such as CFDs and structured warrants) that are cash-settled, if the underlying securities are listed on any exchange, and either:

(i) the cash-settled securities-based derivative contracts are not listed, but the offer is subject to risk disclosure requirements imposed pursuant to the SFA on either the issuer or the intermediary, as set out in Regulation 37 of the new SF(OI)(SSDC)R; or

(ii) the cash-settled securities-based derivatives contracts themselves are to be listed on an approved exchange.

3.1.5 An offer of securities-based derivatives contracts with securities indices as the underlying will also be exempted from the prospectus requirement, where an application has been, or will be, made for the securities-based derivatives contracts to be listed for quotation or quoted on an approved exchange (see new section 273(1)(f) of the SFA[12]).

3.1.6 An offer of futures contracts with securities as the underlying and which is cash-settled could use the prospectus exemption set out in paragraph 3.1.4 above, if it satisfies the criteria for that exemption. There is no change to the current position where an offer

[11] Section 147(h) of the SF(A)A.

[12] Section 147(h) of the SF(A)A.

of futures contract with securities as the underlying and which is physically-settled, will be subject to the prospectus requirement, unless otherwise exempted.

3.1.7 MAS would like to clarify that the use of the term "securities-based derivatives contracts" in Part XIII of the SFA extends the scope of the prospectus requirement to cash-settled securities-based derivatives contracts. Physically-settled securities-based derivatives contracts are already within the scope of Part XIII of the SFA, and will continue to be so after the amendments in the SF(A)A come into effect. Therefore, there is no need for new disclosure schedules for an offer of physically-settled securities-based derivatives contracts. For cash-settled securities-based derivatives contracts, there are a number of prospectus exemptions that apply, such as the new exemption set out in paragraph 3.1.4 above, offers to institutional and accredited investors, small offers and private placements. Issuers and their advisers are encouraged to consult MAS on any queries they may have on the applicable prospectus disclosure requirements for an offer of cash-settled securities-based derivatives contracts that do not fall within any of the available prospectus exemptions.

(b) Closely related offers of securities-based derivatives contract

3.1.8 Some respondents suggested that offers of securities-based derivatives contracts should be treated as closely related under Regulation 35(1) of the SF(OI)(SSDC)R only if they have the same underlying security or securities index or basket, the same start dates, fixing dates and maturity dates, and the same risk and pay-off profiles.

MAS' Response

3.1.9 Regulation 35(1) sets out the circumstances under which offers of securities and securities-based derivatives contracts (other than offers of asset-backed securities or structured notes) will be considered closely related, and therefore count towards the relevant limits, for the small offers ($5m within any period of 12 months) and private placement (50 persons within any period of 12 months) exemptions. The intent is to prevent circumvention of the applicable limits, to ensure that the reach of the securities or securities-based derivatives contracts will remain limited in size and/or scope. MAS is of the view that the current criteria set out in Regulation 35(1)[13] remains appropriate in

[13] The criteria are: (i) both offers form part of a single plan of financing; (ii) both offers are made for the primary benefit of the same person or persons; or (iii) both offers are made in connection with the same business or in relation to a common business venture.

achieving this intent, for both securities and securities-based derivatives contracts and will not be amending Regulation 35(1) as suggested by the respondents.

(c) Exemptions from the prospectus requirement

3.1.10 Some respondents asked whether the current prospectus exemption for institutional and accredited investors in sections 274 and 275 of the SFA can be extended to cover expert investors as well, given that expert investors are now "banded together" with institutional investors and accredited investors.

MAS' Response

3.1.11 MAS would like to clarify that the category of expert investors has not been "banded together" with institutional and accredited investors. In MAS' Response to Feedback received on Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets[14], MAS said that it will retain the expert investors class for now, in light of feedback that this non-retail investor class continues to be relevant for financial institutions. In addition, MAS did not consider it appropriate to fold the expert investors class into either the accredited investors or institutional investor class, since such investors do not have the level of wealth or institutional expertise associated with the other respective investor classes. In this regard, MAS sees no reason to extend the current prospectus exemption for an offer to institutional and accredited investors, to an offer to expert investors.

(d) Transition period

3.1.12 Some respondents asked whether there would be a transition period for the revised offering rules in Part XIII of the SFA and the SF(OI)(SSDC)R, and requested for a 2-year transition period for the application of the offering rules to securities-based derivatives contracts.

MAS' Response

3.1.13 The proposal for expansion of the scope of Part XIII to include cash-settled securities-based derivatives contracts was first set out in MAS' Consultation Paper on Proposed Amendments to the SFA published in February 2015. The response to the

[14] 22 September 2015.

consultation paper published in November 2016 confirmed that we would proceed to introduce amendments to the SFA to implement the proposal. The response also clarified certain new prospectus exemptions for cash-settled securities-based derivatives contracts, such as the one mentioned in paragraph 3.1.4 above. As such, the industry would already have been aware of this expansion in scope of Part XIII for some time now. MAS would thus not be providing any transition period for this.

3.1.14 On the other hand, a transition period will be provided for a prospectus or offer information statement lodged before, or within two months from, the commencement of the SF(OI)(SSDC)R (the "Relevant Document"), and any amendments to the Relevant Document. The Relevant Document would only be required to comply with the requirements in the appropriate disclosure schedules in the SF(OI)(SD)R and SF(OI)(BT)R.

3.2 Disclosure of financial information in a prospectus

3.2.1 MAS consulted on the proposed amendments on the disclosure of financial information in a prospectus, such as the amendments to provide transitional relief from restating up to three years of historical annual financial statements from FRS to the New Framework for the purpose of inclusion in a prospectus. There was no substantive feedback on the amendments.

3.2.2 The proposed amendments were implemented with effect from 1 January 2018.

3.3 Incorporation by Reference

3.3.1 MAS consulted on proposed amendments to prescribe the specific information that can be incorporated into a prospectus by reference, and the conditions and restrictions for incorporating information by reference.

3.3.2 Comments on the proposed amendments were received from three respondents as summarised below. The comments and MAS' responses are set out below.

(a) Proposed Regulation 8A(1)(d) of the SF(OI)(SSDC)R

3.3.3 Two respondents objected to the proposed requirement for the prospectus to contain sufficient details of the reference document (including an explanation as to how the reference document and its contents are relevant to the offer and an investor's investment decision), to allow a person to whom the offer is made to decide whether to obtain a copy of the reference document. They pointed out that it is unclear what "sufficient details" mean, and that requiring details of the reference document runs

counter to the purpose of allowing incorporation of the information in the reference document by reference.

(b) Proposed Regulations 8A(1)(e) and (f)

3.3.4 A respondent suggested that it is unnecessary to require that the prospectus contain a statement that a copy of the reference document will be provided on request during the prospectus validity period, and that the person making the offer must provide the reference document when a copy is requested. The basis for the suggestion was that the reference document would in any case be available on the MAS' website.

(c) Proposed Regulation 8A(1)(h)

3.3.5 The proposed Regulation 8A(1)(h) provided that any information that is required to be disclosed in a product highlights sheet shall not be incorporated by reference. A respondent suggested that this Regulation is unnecessary given that the information which can be incorporated by reference is already limited to what is permitted under the Nineteenth Schedule.

(d) Comments on the proposed Nineteenth Schedule

3.3.6 Two respondents pointed out that the reference in the Nineteenth Schedule to the "Constituent documents of the relevant corporation, entity or business trust" should instead be to "Summary of the constituent documents of the relevant corporation, entity or business trust" as there are only requirements to include summaries of the provisions of constituent documents in a prospectus rather than to set out the whole constituent document in a prospectus.

3.3.7 One respondent pointed out that the references to "equivalent persons" in paragraphs 2 and 3 of the Nineteenth Schedule were unclear, as the term is used in the prospectus content requirements in relation to directors, whereas it is a stand-alone term in the proposed Nineteenth Schedule.

3.3.8 The same respondent further asked for clarification on the rationale to allow only for audited financial information, but not interim financial information and pro forma financial information to be incorporated by reference.

MAS' Response

(a) Proposed Regulation 8A(1)(d) of the SF(OI)(SSDC)R

3.3.9 We have removed this requirement. In its place, we have included requirements that the prospectus must contain a statement that the reference document comprises information that investors would reasonably require to make an informed assessment of the investment being offered, and a statement that investors are advised to read the reference document before making an investment decision.

(b) Proposed Regulations 8A(1)(e) and (f)

3.3.10 We would agree that the majority of potential investors would have no issue accessing the reference documents uploaded on the MAS' website. However, there is likely still a substantial proportion of potential investors who would have a preference for direct access to hard copies of the reference documents. As such, we have kept these requirements.

(c) Proposed Regulation 8A(1)(h)

3.3.11 The proposed regulation is intended to make it clear that any information that is required to be included in a product highlight sheet cannot be incorporated by reference, and must still be in the prospectus. This is because a product highlight sheet is meant to contain all the key information that should be highlighted to the potential investor. We have retained this provision with an added clarification that it is for the avoidance of doubt.

(d) Comments on the proposed Nineteenth Schedule

3.3.12 The reference to "Constituent documents" has been amended to "Summary of the provisions of the constituent documents".

3.3.13 The reference to "directors, equivalent persons" has been amended to "directors or equivalent persons" to clarify that the term "equivalent persons" is used in relation to "directors".

3.3.14 With regard to the query on the rationale for allowing only audited financial information to be incorporated by reference, the Nineteenth Schedule has been amended to include references to the provisions in the respective SF(OI)(SSDC)R Schedules in respect of interim financial statements. We have not extended the provision to pro forma financial information as the page-count for the section on pro forma financial information in a prospectus is typically low.

3.4 Offer Information Statement

3.4.1 MAS consulted on amendments to introduce a new provision to prescribe the form and content of the offer information statement, which is required where MAS has made a declaration in respect of an offer of securities by a subsidiary of a listed entity under the new section 277(1AB) of the SFA.

3.4.2 One respondent asked whether MAS intends to extend section 277(1AB) to an offer of securities by a subsidiary of a listed business trust.

3.4.3 The same respondent commented that most listed entities would have consolidated financial statements at group level, and do not prepare or publish standalone financial statements for each subsidiary. However, the offer information statement under section 277(1AC) must include financial statements of the subsidiary making the offer of securities in accordance with Part 5 of the Sixteenth Schedule to the SF(OI)(SDBT)R. The respondent asked for guidance on how a subsidiary may comply with, or obtain an exemption from this requirement.

MAS' Response

3.4.4 MAS has previously granted exemptions under section 273(5) of the SFA in a number of cases where the listed companies intended to raise funds for the use of the listed groups through the issue of debentures by their subsidiaries. The subsidiaries had no business operations other than to serve as treasury vehicles for the groups, and all the payment obligations under the debentures were unconditionally and irrevocably guaranteed by the listed companies. The exemptions granted under section 273(5) were subject to a condition that an offer information statement providing information on both the listed entity, and the subsidiary making the offer, would be lodged with MAS and issued to offerees. This is because an offer information statement, rather than a prospectus, would have been required had the debentures been offered by the listed company rather than its treasury-vehicle subsidiary.

3.4.5 As such cases were common, the new sections 277(1AB) and (1AC) of the SFA was introduced to cater specifically to such cases. Therefore, where appropriate, MAS may allow a subsidiary of a listed entity to make an offer of securities using an offer information statement in lieu of a prospectus where, inter alia, all the payment obligations of the subsidiary are guaranteed by the listed entity unconditionally and irrevocably. Sections 277(1AB) and (1AC) do not, however, cover listed business trusts as issuance of debentures by subsidiaries of business trusts have not been common. Should there be such a case, MAS may consider whether an exemption under section 273(5) should be granted.

3.4.6 With regard to the respondent's query on obtaining an exemption from the requirements in Part 5 of the Sixteenth Schedule to the SF(OI)(SDBT)R to disclose financial information extracted from the financial statements of the subsidiary, we note that under section 277(2) of the SFA, MAS may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate.

3.5 Further enhancements to disclosure requirements

3.5.1 MAS consulted on enhancements to prospectus disclosure requirements set out in the Schedules of the SF(OI)(SD)R and SF(OI)(BT)R.

3.5.2 Feedback on the proposed amendments were received from three respondents, with the key issues summarised below. Where appropriate, amendments made have been replicated across the Schedules of the SF(OI)(SSDC)R and the Second Schedule of the Securities and Futures (Offers of Investments) (Shares and Debentures) (Exemption from Subdivisions (2) and (3) of Division 1 of Part XIII for REIT Bonds) Regulations 2011 (the "Exemption for REIT Bonds Regulations").

(a) Proposed cautionary statement on the front cover of a prospectus or offer information statement

3.5.3 One of the respondents commented that the proposed statement was inadequate and should also include that the investor ought to have adequate comprehension of the nature of the investment in question, i.e., that the investor should also consider whether the investment is suitable for him given his understanding of the investment. Another respondent commented that the cautionary statement to investors may not have significant incremental value given that it is a boilerplate disclaimer.

MAS' Response

3.5.4 We have incorporated the cautionary statement into the existing required disclaimer that if an investor is in any doubt as to the action he or she should take, he or she should consult his or her legal, financial, tax, or other professional adviser. The final cautionary statement is more comprehensive than the current disclaimer and takes into account the first respondent's comment.

(b) Scope of "consultant" and maximum look-back period for restructuring exercise the consultant is engaged to assist in

3.5.5 We had proposed that there be disclosure of the name and address of consultants engaged by an issuer to assist in: (i) any group restructuring exercise to be undertaken by the issuer in conjunction with the offer (and, as applicable, its application to list for quotation on the approved exchange); or (ii) the issue of securities or securities-based derivatives contracts to investors during the period of 12 months prior to the date of lodgement of the prospectus for the purposes of facilitating the offer (and, as applicable, its application to list for quotation on the approved exchange).

3.5.6 In addition, where there is a material relationship between the issuer and the consultant (as determined in the reasonable opinion of the directors), the issuer is to describe the nature and terms of its relationship with the consultant.

3.5.7 All three respondents sought clarification on the definition of the term "consultant", with one respondent asking if it would include an introducer, given that introducers may facilitate the overall listing process but may not have advised the issuer on any restructuring exercise.

3.5.8 The other two respondents asked if there was a maximum look-back period that applied to the restructuring exercise, as the issuer may not be able to obtain consent of such "consultants" to be named in the prospectus if the restructuring exercise was done too long ago. One of the respondents further commented that investors may not be particularly interested in such information.

MAS' Response

3.5.9 We are of the view that there is no need to define "consultant" as the term is meant to be broad such as to cover any adviser hired for the purpose of advising on the issuer's group restructuring exercise, or issue of securities or securities-based derivative contracts. To address the respondents' comment on whether an introducer would be included, we have specifically required information on the introducer to be disclosed.

3.5.10 In addition, we would like to highlight that the relevant consultant is one that is engaged by the issuer to assist in any group restructuring exercise to be undertaken by the issuer *in conjunction* with the offer and its application to list for quotation on the approved exchange. Hence, we do not expect that the engagement of the consultant to have taken place too long before the offer or listing application. Given that such consultants would have played a part in either: (i) advising on the group restructuring exercise, which would determine the structure and assets of the issuer whose shares or units are being offered; or (ii) assisting with the issue of securities or securities-based derivatives contracts to investors prior to the lodgement of the prospectus for the

purposes of facilitating the offer, we are of the view that the proposed information on such consultants should be disclosed.

(c) Risk factors

3.5.11 We had proposed further guidance to issuers on the disclosure of risk factors in the prospectus. One respondent commented that given the diverse nature of issuers' business and the diverse risks applicable to them, it would not be possible to provide comprehensive guidance on what risk factors ought to be disclosed. The respondent further commented that providing such guidance may have the unintended effect of entrenching boilerplate risk factors as issuers may, in order to adhere to the guidance, include the risk factors mentioned even though those risk factors may not be entirely relevant to them.

3.5.12 The respondent also commented that it would, in most cases, be difficult to quantify the impact of a risk factor, and it is also unclear when it would be "possible and appropriate" to include such quantification.

MAS' Response

3.5.13 Taking into consideration the feedback above, we have not incorporated the further guidance on the type of issues that risk factors may relate to. However, where possible, the extent to which the relevant corporation's financial position or results had been or could be affected by the risk factor should be disclosed.

(d) Provision of email address of the issuer

3.5.14 We received feedback from one respondent that there should be a requirement for the issuer to provide an email address.

MAS' Response

3.5.15 We have taken in this suggestion. In addition to the address, telephone and facsimile numbers of the issuer's registered office and principal place of business, an email address of the issuer or a representative of the issuer would have to be provided as well.

(e) Disclosure requirements under business overview

3.5.16 We had proposed a clarification that details of the issuer's main business' seasonal nature would include the material effects on its production, sales, inventory, costs and revenues. Two respondents commented that it may be impracticable to state the effects

of seasonality on the production, sales, inventory, costs and revenues quantitatively. The reason given is that the changes may be due to various factors, including seasonality or non-recurring transactions.

3.5.17 We had also proposed to remove the disclosure of "marketing activities" under the Fifth Schedule and proposed Seventeenth Schedule due to industry feedback that such information is not significant to investors' investment decision. One respondent commented that depending on the nature of the business and the industry, details of the marketing activities may be relevant. The respondent suggested that disclosure of marketing activities should thus be qualified as required, where relevant. Another respondent agreed with the removal of the requirement for the disclosure of marketing activities.

MAS' Response

3.5.18 We have not incorporated the elaboration on the kind of information to be included in relation to the seasonal nature of the issuer's business.

3.5.19 In relation to the feedback disagreeing with the removal of the disclosure requirement for "marketing activities", we note that a person making an offer of securities would still be subject to the general requirement under section 243 of the SFA that a prospectus for an offer of securities shall contain all the information that investors and their professional advisers would reasonably require to make an informed assessment of specified matters. Thus, marketing activities that would fall under the general requirement under section 243 should still be disclosed by the issuer.

(f) Information on fixed assets

3.5.20 We had included elaborations on the disclosure requirement for properties that are considered a material tangible fixed asset of the issuer. In particular, where the property is leased by the relevant corporation, the issuer should disclose the identity of the lessor, the duration of the lease, the rent payable and if the lease may be unilaterally terminated by the lessor, a statement of such fact, and the potential consequential impact on the relevant corporation's operations

3.5.21 Two respondents commented that the above additional disclosures required may be commercially sensitive for the issuer.

MAS' Response

3.5.22 Where the property being leased by the relevant corporation is a material tangible fixed asset of the issuer, such information would be of interest to an investor. However, we acknowledge that the rent payable may be particularly commercially sensitive for an issuer especially if the issuer may be leasing more than one such property from different lessors. Hence, we will not prescribe that the issuer discloses the rent payable.

(g) Liquidity and capital resources

3.5.23 We had proposed to specify that the directors of the issuer provide a statement as to whether, in their reasonable opinion, the working capital available to the issuer or the issuer group, as at the date of lodgement of the prospectus is sufficient for at least the next 12 months (instead of for "present requirements"). Two respondents suggested to retain the original requirement that the statement be in relation to present requirements. One respondent commented that the proposed amended requirement may prove challenging, given that such an opinion is a forward-looking statement. The two respondents also suggested that the time period should be from the date of registration rather than the date of lodgement.

MAS' Response

3.5.24 As stated in the consultation paper, we had proposed a 12-month period taking into account the practices in the UK and EU, and the time horizon which directors have to consider when assessing the appropriateness of the going concern assumption in preparing annual reports. We will also retain the reference to the date of lodgement given that the intent is that only sources of liquidity that are certain as at the date of lodgement should be taken into account when the directors provide the confirmation statement at the date of lodgement.

(h) Statement by issue manager on assumptions of profit forecast

3.5.25 In relation to the disclosure of a current financial year profit forecast, we had proposed that an opinion from the issue manager or any authoritative person on the reasonableness of the assumptions for the profit forecast could be provided as an alternative to the existing options. The existing options being: (i) a statement by the issue manager or authoritative person that the profit forecast has been stated by the directors of the issuer after due and careful enquiry and consideration; or (ii) a statement by an auditor of the issuer that no matter has come to his attention which gives him reason to believe that the assumptions do not provide reasonable grounds for the profit forecast.

3.5.26 Two respondents commented that the additional requirements should not be included because:

(i) auditors or accountants typically refuse to provide comfort on the reasonableness of assumptions and an issue manager providing such statement would not have the benefit of a due diligence defence in the absence of such comfort letter; and

(ii) it is not reasonable for the issue manager to provide confirmation on the reasonableness of assumptions, as this relates to the business and operations of the issuer, and only the issuer is in the position to give such confirmation.

MAS' Response

3.5.27 We have not incorporated the proposed amendments given the above feedback that issue managers would not be able to provide the proposed statement.

(i) Disclosure on compensation for services

3.5.28 We had proposed in the Fifth, Seventh and proposed Seventeenth Schedules that issuers would not need to identify an individual to whom compensation was paid, or is to be paid, in any financial year pursuant to any bonus or profit-sharing plan or any other profit-linked agreement or arrangement, and briefly describe such plan, agreement or arrangement and the basis of the individual's participation in the plan, agreement or arrangement, provided that:

(i) the individual is not a director or controlling shareholder;

(ii) the total amount paid or which is to be paid pursuant to any such plan, agreement or arrangement to such individual had not accounted or would not account for more than 1% of the profit before tax of the issuer or the issuer group, in that financial year; and

(iii) the maximum aggregate amount that was paid or is to be paid to all such individuals under such plans, agreements or arrangements in each financial year is disclosed.

3.5.29 Two respondents asked how the carve-out would apply if the issuer is loss-making for a particular year. In addition, one respondent commented that it may not be possible to ascertain what the maximum aggregate amount to be paid to the persons under a

bonus, profit-sharing plan, or any other profit-linked agreement or arrangement depending on how the plan, agreement or arrangement is structured.

MAS' Response

3.5.30 When an issuer is loss-making for a financial year, the proposed carve-out would not apply for that year if any amount has been paid to the individual pursuant to the individual's plan, agreement or arrangement. A brief description of the individual's plan, agreement or arrangement and the basis of such person's participation in the plan, agreement or arrangement would need to be disclosed.

3.5.31 The carve-out can only be applied to an individual in relation to a financial year, if the amount paid and which is to be paid to him (pursuant to the plan, agreement or arrangement) can be determined to be not more than 1% of the profit before tax of the relevant corporation for that financial year.

(j) Offer statistics, principal terms and conditions, offer details

3.5.32 In conjunction with the proposal to allow an offer information statement under the Sixteenth Schedule to disclose that the amount of subscriptions and/or number of debentures or units of debentures are not fixed at the date of lodgement, we had proposed that an explanation of the circumstances relating to the reduction in the final amount of subscriptions (or the number of debentures or units of debentures being offered) be disclosed, if the final amount of subscriptions being sought (or final number of debentures or units of debentures being offered) may be reduced. In addition, we had proposed that if the amount of subscriptions being sought (or number of debentures or units of debentures being offered) has not been fixed, the process by which the final amount of subscriptions (or number of debentures or units of debentures) is to be determined, should be disclosed.

3.5.33 One respondent commented that any reduction in the final amount of subscriptions will likely be due to less investor demand than expected, and the final offer size will typically be determined by the issuer in consultation with the lead managers after ascertaining investor demand. Hence there is not much granular information which can be disclosed in relation to the abovementioned proposed requirements.

3.5.34 We had also proposed that the process by which the yield (or nominal interest rate) is to be determined should be disclosed, if the yield (or nominal interest rate) is not fixed at the date of lodgement of the offer information statement.

3.5.35 We received feedback that it may not be practicable to disclose a summary of the method of calculation of the yield or interest rate, or the process by which the yield or interest rate is determined.

3.5.36 We had further proposed that the method for determining the discount or premium of debentures that are offered at a discount or premium, be disclosed. The feedback received indicated that it would not be practicable to disclose the method for determining the discount or premium, as such commercial decisions are made based on, among other things, an estimation of investor demand and not on any specific or scientific method.

MAS' Response

3.5.37 Given the feedback, we have implemented the abovementioned proposal to allow an Offer Information Statement under the Sixteenth Schedule of the SF(OI)(SSDC)R and the Second Schedule of the Exemption for REIT Bonds Regulations to disclose that the amount of subscriptions, and/or number of debentures or units of debentures are not fixed at the date of lodgement, but not the other proposals mentioned above.

3.5.38 Separately, we have replicated some of the amendments to the offer statistics requirements under the offer information statement in the Schedules of the SF(OI)(SSDC)R in respect of prospectus disclosure requirements for offers of debentures that require a prospectus[15]. The amendments allow a prospectus for an offer of debentures to disclose that the amount of subscriptions and/or number of debentures are not fixed at the date of registration of the prospectus. We have not, however, replicated the amendment to allow disclosure that the yield or nominal interest rate of the debenture being offered are not determined, as the issuer can determine such yield or nominal interest rate through a book-building process using a preliminary prospectus before the prospectus is registered.

(k) Rights of debenture holders and remedies available in the event of default

3.5.39 We had proposed that, in addition to disclosing the rights conferred upon debenture holders, including rights in respect of interest and redemption, the issuer should disclose whether these rights may be materially limited or qualified by the rights of any other class of security holders or creditors. We had also proposed that the remedies

[15] i.e. the Seventh Schedule, Eighth Schedule, Ninth Schedule and Tenth Schedule.

available in the event of default of the debenture being offered, as well as information on when holders of the debentures would be able to take action to enforce their claims should be disclosed.

3.5.40 One respondent commented that it may be impossible to ascertain how rights conferred upon holders may be materially limited or qualified by the rights of any other class of security holders or creditors. This is because contractual remedies given to other security holders or creditors should not be able to affect remedies given to holders. In addition, the status at the point of disclosure may not be indicative of the situation at actual enforcement where any contractual remedies would likely to, in any case, be determined and enforced by a court. The respondent also commented that it may not be practicable to set out granular details of the remedies available in an event of default, or when holders would be able to take action to enforce their claims.

MAS' Response

3.5.41 In relation to the above, we have incorporated the amendments as they are in line with the international debt disclosure principles set out in the International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers[16] issued by the International Organisation of Securities Commissions (IOSCO) ("IOSCO Disclosure Principles for Debt Offerings").

3.5.42 Specifically, the IOSCO Disclosure Principles for Debt Offerings states that, "*in order to fully understand their rights as debt security holders, investors in the debt securities need information about whether the rights evidenced by the debt securities are or may be materially limited or qualified by the rights of any other class of securities*"[17].

3.5.43 The IOSCO Disclosure Principles for Debt Offerings also states that, "*disclosure in the* Document *about the events that would constitute a default, as well as the remedies under the terms and conditions of the Debt Securities that would be available in the event of default, would be viewed as essential information to investors. For example, default may result in the acceleration of maturity of the Debt Securities if certain conditions are*

[16] The International Disclosure Principles for Cross-border Offerings and Listings of Debt Securities by Foreign Issuers, Technical Committee of the International Organization of Securities Commissions, dated March 2017, can be accessed at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD242.pdf.

[17] The IOSCO Disclosure Principles for Debt Offerings, Paragraph E, Part II of the International Debt Disclosure Principles.

satisfied. Also, investors should know when they would be able to take action to enforce their claims"[18].

(I) Documents for inspection

3.5.44 We had proposed in the relevant schedules for offers of debentures[19] that the trust deed, fiscal agency agreement or other document constituting the debentures (or units of debentures),and in the case of a guaranteed debenture issue, the guarantee and other related documents, be made available for inspection by any person at a specified place in Singapore from the date of registration by MAS of the prospectus and for as long as any debentures (or units of debentures) remain outstanding.

3.5.45 In relation to the above, we received further feedback from issuers, trustees and lawyers that it would be administratively burdensome to make the abovementioned documents available for inspection by the public for the whole life of the bond. Doing so would also allow persons who may not have *bona fide* motives to access such documents. In any event, bondholders would have the right to inspect such documents. One respondent also commented that an offer document only forms the basis for the initial offer of securities, and not for the secondary trading in such securities. Therefore, after the conclusion of the initial offer, it should not be the case that persons looking to purchase the securities in the secondary market can rely on statements made in the offer document. It was suggested that if required, the inspection period should be limited to six months, in line with the current requirements for offers made with a prospectus. We have also received feedback from one of the respondents that the trust deed should be made available for inspection for an offer of debentures made with an offer information statement.

3.5.46 We had also proposed in the schedules relating to the disclosure content requirements for an offer information statement, a requirement to state that the issuer will, for a period of at least 6 months from the date of lodgement of the offer information statement, make available for inspection the constituent document of the issuer, every material contract referred to in the offer information statement and every report,

[18] The IOSCO Disclosure Principles for Debt Offerings, Paragraph F, Part II of the International Debt Disclosure Principles.

[19] i.e. the Seventh Schedule, Eighth Schedule, Ninth Schedule, Tenth Schedule, Sixteenth Schedule of the SF(OI)(SSDC)R as well as the Second Schedule of the Exemption for REIT Bonds Regulations.

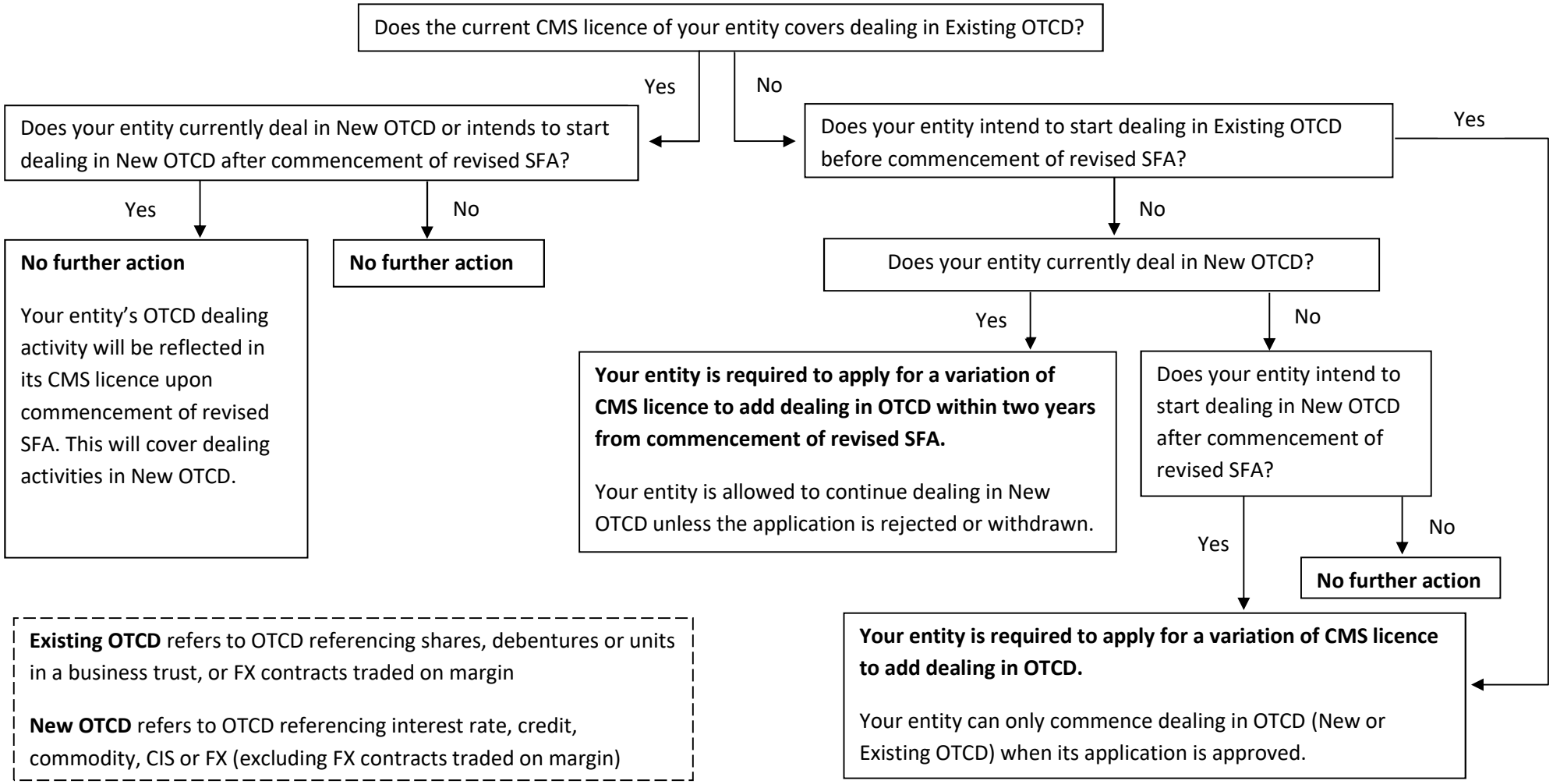
memorandum, letter, valuation, statement or other document by any expert any part of which is included or referred to in the offer information statement.

3.5.47 One of the respondents agreed with the inclusion of this requirement. Another respondent commented that as the issuer would be an issuer listed on an approved exchange, it would already be subject to ongoing disclosure obligations under the approved exchange's listing rules, and already required to publicly disclose all material information in the manner required by the listing rules. The respondent submitted that if the ongoing disclosure obligations did not require such material contracts to be made available for inspection, it should not be required just because the entity issues an offer information statement. The respondent further noted that unlike a listed issuer making an offer using an offer information statement, a person making an offer with a prospectus is not an existing listed entity, and would not at the time of issue of the prospectus been subject to ongoing disclosure obligations.

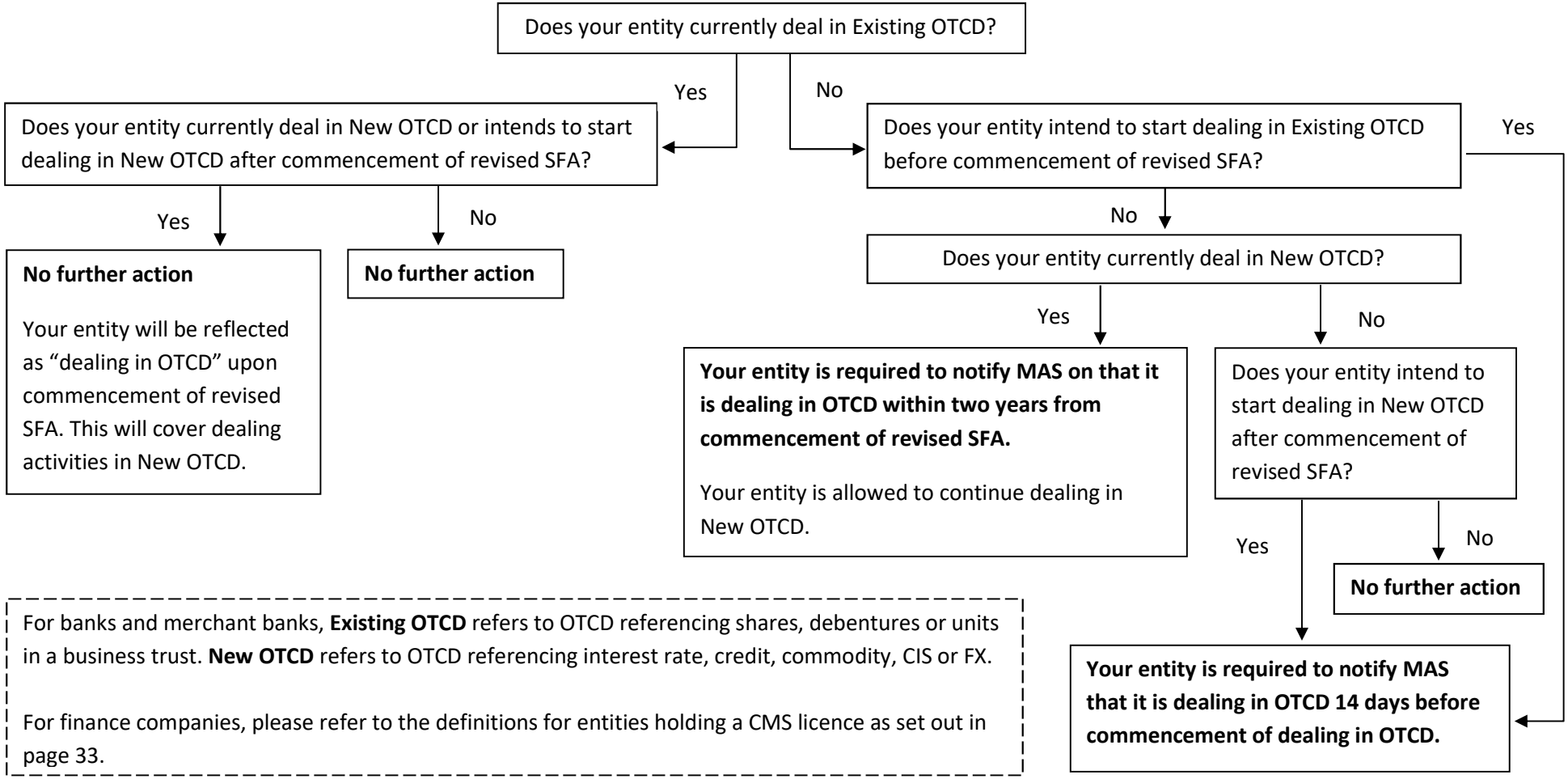
MAS' Response

3.5.48 Taking into consideration the feedback as set out above, we will only amend the Sixteenth Schedule of the SF(OI)(SSDC)R (and the Second Schedule of the Exemption for REIT Bonds Regulations) to require that the trust deed, fiscal agency agreement or other document constituting the debentures (or units of debentures) and in the case of a guaranteed debenture issue, the guarantee and other related documents, be made available for inspection by any person at a specified place in Singapore for a period of at least 6 months from the date of lodgement of the offer information statement. We will retain the existing requirement for the trust deed, fiscal agency agreement or other document constituting debentures (or unit of debentures) offered with a prospectus to be made available for inspection for a period of at least six months after the date of registration of the prospectus.

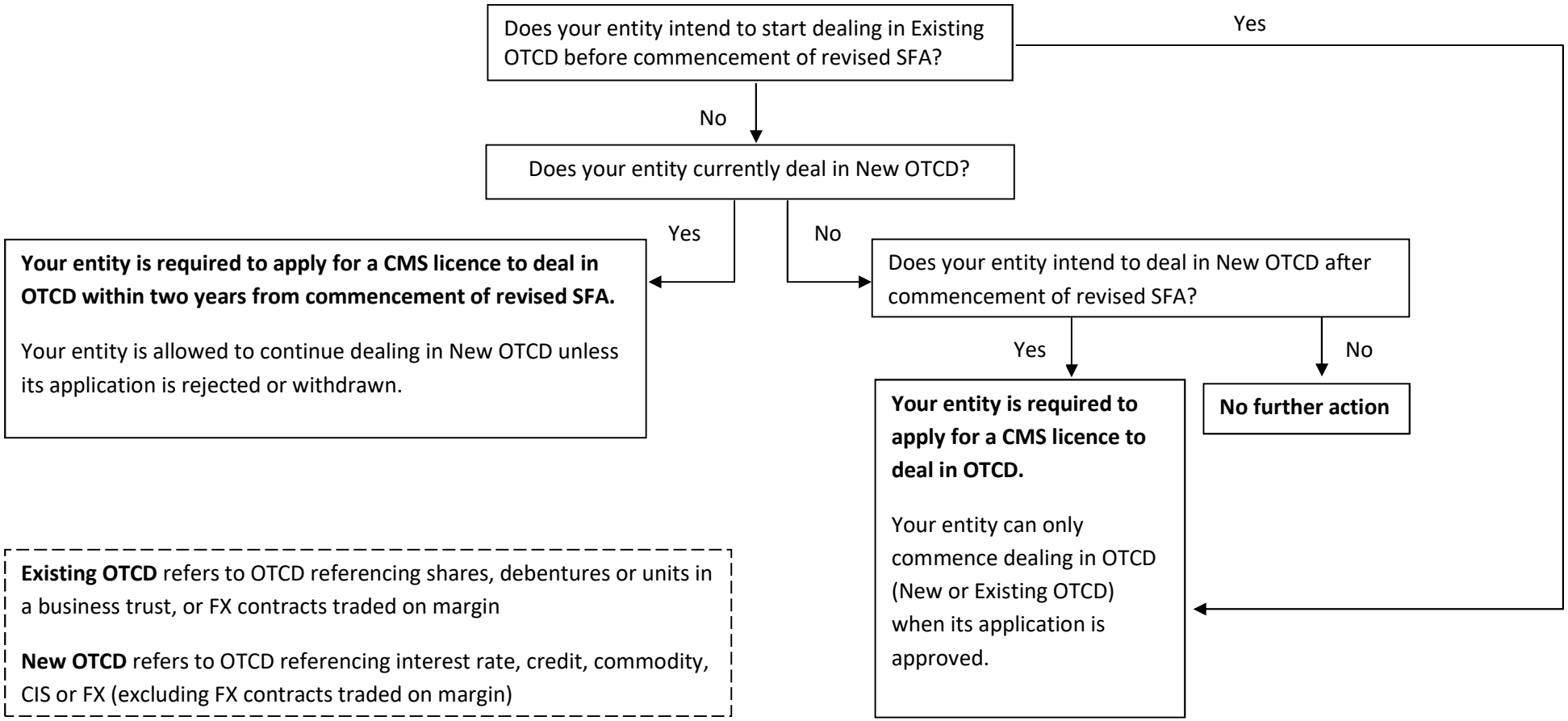
Licensing Flowchart for Entities currently holding a CMS Licence



Notification Flowchart for Banks, Merchant Banks and Finance Companies conducting regulated activities under SFA



Licensing Flowchart for Entities that currently do not hold any licence with MAS



Annex A

LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON DRAFT REGULATIONS II PURSUANT TO THE SECURITIES AND FUTURES ACT

1. Allianz Global Investors Singapore Limited
2. Association of Independent Asset Managers, Singapore
3. Avanda Investment Management Pte Ltd
4. Clifford Chance Pte. Ltd.
5. Eastspring Investments (Singapore) Limited
6. FIL Investment Management (Singapore) Limited
7. Investment Management Association of Singapore
8. International Swaps and Derivatives Association, Inc., Asia Securities Industry & Financial Markets Association and Futures Industry Association
9. Lymon Pte. Ltd.
10. NEX Optimisation, TriOptima AB and Reset Private Limited*
11. S&P Global Ratings Singapore Pte Ltd*
12. Securities Association of Singapore*
13. Singapore Exchange Limited*
14. Sumitomo Mitsui Banking Corporation, Singapore Branch
15. The Hongkong and Shanghai Banking Corporation Limited, Singapore Branch, HSBC Bank (Singapore) Limited, HSBC Institutional Trust Services (Singapore) Limited, and HSBC Insurance (Singapore) Pte. Limited **
16. Respondent A
17. Respondent B
18. Respondent C
19. Respondent D

20. Respondent E

21. Five respondents requested confidentiality of their identity and submission.

Respondents requested for confidentiality for their submitted response Respondent requested for confidentiality for part of their submitted response*

Please refer to Annex B for the submissions.

RESPONSE TO FEEDBACK RECEIVED ON DRAFT REGULATIONS PURSUANT TO SECURITIES AND FUTURES ACT

1 October 2018

Monetary Authority of Singapore