

CONSULTATION PAPER

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Consultation Paper on Draft Regulations pursuant to the Securities and Futures Act and Financial Advisers Act

MAS

Monetary Authority of Singapore

DRAFT REGULATIONS PURSUANT TO THE SECURITIES AND FUTURES ACT AND FINANCIAL ADVISERS ACT

PREFACE

The Securities and Futures (Amendment) Act 2012 [“SF(A)Act 2012”] was passed by Parliament on 15 November 2012. It provides MAS with legislative powers, among other powers, to effect certain policy proposals arising from the review of the regulatory regime governing the sale and marketing of listed and unlisted investment products, as set out in MAS’ consultation papers dated 12 March 2009 and 28 January 2010 [“Mar 2009/Jan 2010 Consultation Papers”] and related responses.

2 MAS is now consulting on draft Regulations pursuant to the Securities and Futures Act (Cap. 289) [“SFA”] and Financial Advisers Act (Cap. 110) [“FAA”] to support the legislative amendments, and to further enhance and refine our regulatory framework.

3 MAS invites interested parties to provide their comments and feedback on the draft Regulations to:

Capital Markets Policy Division
Markets Policy and Infrastructure Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Email: SFA_FAA_LegisConsult@mas.gov.sg

Fax: (65) 6225-1350

MAS requests that all comments and feedback be submitted by 17 October 2013.

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

INTRODUCTION

1 To strengthen safeguards for retail investors, the SF(A)Act 2012 empowers MAS to prescribe Regulations in relation to requirements for:

- (A) a Product Highlights Sheet to be issued in a prescribed format for certain offers of securities under Part XIII of the SFA;
- (B) issuers of unlisted debentures to provide timely and ongoing disclosures to investors; and
- (C) advertisements of certain offers of securities to give a fair and balanced view of the product and comply with certain restrictions.

2 MAS is therefore proposing amendments to various Regulations under the SFA and the FAA to give effect to policy proposals as set out in its 2009/2010 Consultation Papers and related responses.

3 Further to the above, MAS is proposing to remove exemptions available to Financial Advisers [“FAs”] from complying with certain business conduct requirements under the FAA when providing financial advisory services to overseas investors. This proposal is elaborated on in Section D of this consultation paper.

A PRODUCT HIGHLIGHTS SHEET [“PHS”]

4 MAS has published the Guidelines on the Product Highlights Sheet [SFA 13-G10] to provide guidance to issuers and their professional advisers in preparing a PHS for offers of asset-backed securities, structured notes, unlisted collective investment schemes and exchange traded funds that are made with a prospectus. MAS has given legal effect to the requirement for a PHS in the SF(A)Act 2012. MAS will be prescribing the form and content of the PHS¹ by amending the:

- (i) *Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations* [“SF(OIS)(SD)Regs”], at **Annex 1**; and
- (ii) *Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations* [“SF(OIS)(CIS)Regs”], at **Annex 2**.

¹ MAS will be amending the Guidelines on the Product Highlights Sheet [SFA 13-G10] such that the requirements relating to the form and content of the PHS, which are to be prescribed in the SF(OIS)(SD)Regs and SD(OIS)(CIS)Regs, will no longer be set out in SFA 13-G10.

B ONGOING DISCLOSURE FOR UNLISTED DEBENTURES

5 The guidance for issuers to provide timely and meaningful ongoing disclosures to holders of unlisted debentures is currently set out in the Guidelines on Ongoing Disclosure Requirements for Unlisted Debentures [SFA 13-G11]. MAS has given legal effect to the requirement for issuers to provide ongoing disclosures to debenture holders in the SF(A)Act 2012. MAS will be prescribing the form and content of ongoing disclosures by way of amendments to the *SF(OIS)(SD)Regs*².

C FAIR AND BALANCED ADVERTISING AND OTHER ADVERTISING RESTRICTIONS

6 In response to feedback received on the March 2009 Consultation Paper, MAS stated its intention to require advertisements for investment products³ to give a fair and balanced view of a product and comply with other advertising restrictions.⁴ To ensure accountability for advertisements published, MAS intends to require senior management of financial institutions [“FIs”]⁵ and other persons who are subject to these requirements to approve advertisements before they are made public.

7 Pursuant to powers to prescribe restrictions on advertisements as introduced in the SF(A)Act 2012, MAS is proposing amendments to the:

- (i) *SF(OIS)(SD)Regs*;
- (ii) *SF(OIS)(CIS)Regs*; and
- (iii) *Securities and Futures (Offers of Investments) (Business Trusts) Regs*, at **Annex 3**.

These advertising restrictions will apply to all persons preparing or issuing advertisements in relation to shares, debentures, business trusts and collective investment schemes which are subject to prospectus requirements under Part XIII of the SFA.

² The Guidelines on Ongoing Disclosure Requirements for Unlisted Debentures [SFA 13-G11] will be cancelled when the amendments to the SF(OIS)(SD)Regs are effected.

³ While the response paper stated that the proposals were in relation to advertisements on “unlisted investment products”, the scope of the proposals was subsequently extended to include “listed investment products” in the January 2010 Consultation paper.

⁴ These include restrictions on advertisements suggesting that “the product is, or is comparable to, a deposit” or “there is no or little risk of an investor losing his principal or not achieving the stated or targeted rate of returns.”

⁵ For FIs who advertise indirectly through, or in collaboration with a third party, senior management of the FI will remain accountable for approving the advertisements.

8 Advertisements in respect of capital markets products prepared, published, circulated or distributed by holders of a capital markets services licence [“CMSLs”], exempt FIs⁶, and their representatives will be subject to similar requirements under the proposed Regulation 46AA of the *Securities and Futures (Licensing and Conduct of Business) Regulations* [“SF(LCB)”], at **Annex 4**. Existing advertising regulations contained in Regulation 46 will be rationalised with the new Regulation 46AA where appropriate,⁷ but will otherwise continue to apply in respect of all other advertisements made by CMSLs, exempt FIs and their representatives.

9 For FAs and their representatives, the scope of advertisements covered by the proposed Regulation 22A of the *Financial Advisers Regulations* [“FAR”, at **Annex 5**] (which mirrors SF(LCB) Regulation 46AA) will be wider, including advertisements in respect of life policies and structured deposits⁸. MAS is further proposing to introduce an equivalent of Regulation 46 of the SF(LCB), as amended, to the FAR. This would provide specific prohibitions on inaccurate or misleading statements in FAs’ advertisements⁹, and achieve greater consistency in advertising regulations applicable to intermediaries regulated under the SFA and FAA. In addition, the proposed restrictions on advertisements would be extended to all direct life insurers via a Notice issued under the Insurance Act (Cap 142). This would ensure consistency in advertising restrictions applicable to direct life insurers acting as product providers.

⁶ This refers to persons who are exempt from holding a CMS licence under section 99(1)(a), (b) or (c) of the SFA.

⁷ Regulation 46(a) and (b) of the Securities and Futures (Licensing and Conduct of Business) Regulations currently contain restrictions on advertisements in respect of securities and futures, which are capital markets products. These requirements will therefore be rationalised with the proposed new Regulation 46AA, which covers advertisements in respect of all capital markets products.

⁸ The proposed Regulation 22A will cover advertisements in respect of “investment products”, which is defined in section 2 of the FAA, read with the Financial Advisers (Prescribed Investment Products - Structured Deposits) Regulations, as capital markets products, life policies and structured deposits (including dual currency investments).

⁹ FAs are currently subject to general obligations to not make “false or misleading” statements or representations to their clients under the Notice on Information to Clients and Product Information Disclosure [FAA-N03].

D REMOVAL OF EXEMPTION FOR ADVISING OVERSEAS INVESTORS

10 Regulation 36 (Reg. 36) of the FAR exempts FAs¹⁰ from having to comply with certain conduct of business requirements under the FAA when providing financial advisory services to “overseas investors”¹¹. An “overseas investor” refers to a person located outside Singapore who is:

- (a) an individual and —
 - (i) not a citizen of Singapore;
 - (ii) not a permanent resident of Singapore; and
 - (iii) not wholly or partly dependent on a citizen or permanent resident of Singapore; or
- (b) in any other case, a person with no commercial or physical presence in Singapore.

11 Overseas investors receiving advice from FAs are therefore afforded less regulatory protection under the FAA compared to other investors, all other things being equal.

12 To ensure that the regulatory regime for financial advisory services protects investors equally, irrespective of their citizenship/residency status or physical location, MAS is proposing to remove this exemption. This will provide certainty to overseas investors on the safeguards that apply when receiving financial advisory services from FAs in Singapore, in turn bolstering such investors’ confidence in Singapore’s FA industry. Removing the exemption would also be in line with IOSCO’s core objectives of securities regulation, which provides that investors should be treated in a just and equitable manner¹².

¹⁰ This refers to holders of a financial adviser’s licence under the FAA and persons who are exempt from requirements to hold such a licence under section 23(1) of the FAA.

¹¹ These include requirements for FAs to have a reasonable basis for making a recommendation with respect to any investment product (FAA section 27), to adhere to regulations with respect to receipt and segregation of client’s money or property (FAA section 28), and to make various disclosures to clients (FAA section 25 & 36). FAs also do not have to comply with subsidiary legislation and other instruments issued by MAS with respect to the exempted FAA conduct of business requirements.

¹² As set out in IOSCO’s Methodology for assessing implementation of the IOSCO Objectives and Principles of Securities Regulation, <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD359.pdf> (p12).

13 MAS expects that the cost impact of the exemption's removal on the industry would be modest, and notes that there may be benefits to firms in terms of improving their attractiveness to potential overseas clients. In practice, MAS has observed that FAs generally apply the same policies and procedures to their financial advisory activities irrespective of their customers' citizenship/residency status or physical location.

14 MAS accordingly proposes to remove the exemption afforded to FAs when providing financial advisory services to overseas investors. This will be done by deleting Regulation 36 of the FAR.

INVITATION FOR COMMENTS

15 MAS would like to invite comments on the following:

- (i) The proposed amendments to various Regulations under the SFA and the FAR to implement proposals to enhance safeguards for investors in the sale and marketing of investment products (**Annexes 1 to 5**).
- (ii) The proposed removal of the exemption afforded to FAs when providing advisory services to overseas investors, by deleting Regulation 36 of the FAR (**Annex 5**).



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