

RESPONSE TO FEEDBACK RECEIVED - CONSULTATION PAPER ON AMENDMENTS TO FINANCIAL ADVISERS ACT

On 23 April 2003, MAS issued a Consultation Paper inviting comments from the industry and the public on proposed amendments to the Financial Advisers Act ("FAA") contained in the draft Financial Advisers (Amendment) Bill ["FA(A) Bill"]. The Consultation Paper sought comments on minor policy changes and technical modifications to clarify MAS' administration of the FAA and improve the consistency of requirements in the FAA with those in the Securities and Futures Act ("SFA").

The consultation period closed on 22 May 2003. Comments were received from 13 respondents (listed in the Annex). MAS has carefully considered the comments received and where it has agreed with the comments, incorporated them in the FA(A) Bill. The FA(A) Bill is introduced for first reading in Parliament on 14 August 2003.

A second phase of amendments to the FAA will be carried out in the second half of 2004 to implement more substantive policy reforms.

MAS thanks all respondents for their feedback. Comments of wider interest and MAS' responses are highlighted below.

1. Definition of "Life Policy"

Respondents agreed with the proposed exclusion of "any contract of reinsurance" from the scope of the definition of "life policy". A respondent suggested that MAS considers excluding derivatives that may have characteristics of life insurance contracts from the definition as well.

MAS' Response: "Any contract of reinsurance" is excluded from the scope of the definition of "life policy", as life reinsurance activities are already regulated under the Insurance Act. Many new products, including derivatives products, have been launched since the FAA was enacted. MAS will review the appropriate regulatory treatment for such new products which do not currently fall within the definition of "investment product" under the FAA to take into account market developments.

2. Only individuals to act as representatives of financial advisers

A respondent noted that "representative" is already defined to be only an individual in the FAA, and queried the need for adding a provision to expressly prohibit persons, not being an individual, from acting as or holding themselves out to be representatives. Clarification was sought on the intent of this provision.

MAS' Response: There is currently ambiguity as to whether corporate entities can act as representatives of financial advisers ("FAs"). The amendment addresses this issue by clarifying the policy intent that only natural persons can act as or hold themselves out to be representatives of licensed FAs and exempt FAs.

3. Offence provision for breach of section 27

Section 27 prohibits an FA from making a recommendation on an investment product without a reasonable basis. The reference to "making a recommendation" includes a recommendation made "by implication". A respondent expressed concern that the addition of an offence provision could potentially make any action or omission a breach of section 27 and thus, attract a penalty under the new offence provision. The respondent was of the view that the current measures in place for a needs-based sales process would lead towards needs-based sales as opposed to product pushing.

MAS' Response: The respondent has rightly pointed out that the purpose of imposing measures for a needs-based sales process is to ensure that FAs and their representatives give due consideration to the client's investment objectives, financial situation and particular needs when making recommendations on investment products. After further consideration, MAS is of the view that the current penalty imposed on breaches of requirements in the Notice on Recommendation on Investment Products is adequate, and MAS has removed the proposed offence provision in the FA(A) Bill.

4. Requirement for signature on and retention period for circulars and written communications sent to customers

Respondents agreed with the proposed amendment to remove the requirement for FAs and their representatives to sign off on circulars or other written communications that contain recommendations on securities.

A number of respondents sought clarification on whether the requirement for preserving circulars or other communications in section 36(5) of the FAA extends to all forms of documents sent to customers, and suggested that the retention period for such documents be reduced from seven years to six years or if feasible, three years or a year.

MAS' Response: Under section 36(5) of the FAA, FAs are required to preserve a copy of all circulars or written communications sent to customers for seven years, only if they contain recommendations on securities. It is important to preserve such material as part of the company's records. MAS however agrees with the suggestion to reduce the retention period. To align with regulation 25 of the Financial Advisers Regulations 2002 which pertains to the requirement on record retention, the retention period in section 36(5) will be reduced from seven to six years. This is also in line with the statutory period of limitation for contractual actions under the Limitation Act (Cap. 163).

MONETARY AUTHORITY OF SINGAPORE
14 August 2003

LIST OF RESPONDENTS TO PUBLIC CONSULTATION ON AMENDMENTS TO FINANCIAL ADVISERS ACT

Commerzbank AG
Deloitte & Touche
General Agents & Managers Association Singapore Chapter
General Insurance Association of Singapore
Hong Leong Finance Ltd
Institute of Certified Public Accountants of Singapore
Investment Management Association of Singapore
Life Insurance Association, Singapore
Securities Association of Singapore
The Association of Banks in Singapore
The Law Society of Singapore
The Society of Remisiers, Singapore
United Overseas Bank

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