

## REGULATION UPDATE

### CONSULTATION PAPER ON SECURITIES AND FUTURES AND FINANCIAL ADVISERS REGULATIONS

The Monetary Authority of Singapore (the “MAS”) is holding a public consultation on certain new proposed regulations and amendments to existing regulations drafted pursuant to the recently-amended Securities and Futures Act (the “SFA”) and Financial Advisers Act (the “FAA”). The consultation is open for public feedback until **21 July 2009**.

Many of the regulations in the consultation paper relate to changes which have been previously announced. These include the implementation of the representative notification framework and public register, introduction of provisional representatives, and the provision of a continuing licensing regime for capital market services (“CMS”) licence holders. Please click [here](#) to refer to our earlier update which discusses these changes.

This update will discuss the following proposed changes:

- (a) transitional provisions relating to licensing and representative notification;
- (b) licensing and business conduct requirements from the consultation paper issued on 16 June 2009; and
- (c) markets and clearing facilities regulations.

#### Transitional provisions

##### *Background*

The two main sets of regulations which will be impacted by the proposed amendments are the Securities and Futures (Licensing and Business Conduct) Regulations (the “LCB Regulations”) and the Financial Advisers Regulations (the “FA Regulations”). They will be amended to implement the new regulatory regime for CMS licence holders, financial advisers (“FA”) licence holders, CMS representatives and FA representatives. Currently, CMS and FA representatives have to individually apply for and hold a licence in respect of the business activities which they carry out for their principals. This will change under the new regime, which requires the CMS or FA principals to notify the MAS of their intention to appoint the relevant representative and certify that he is a “*fit and proper*” person to be appointed. The representative’s name will then be reflected on a public register.

##### *Transitional regulations*

The proposed Securities and Futures (Capital Markets Services Licence

and Representatives) (Transitional and Savings Provisions) Regulations (the “**SF Transitional Regulations**”) and Financial Advisers (Financial Advisers Licence and Representatives) (Transitional and Savings Provisions) Regulations 2009 (the “**FA Transitional Regulations**”) set out the transitional provisions applicable to holders of CMS and FA licences and to CMS and FA representatives when the new regulatory regime takes effect.

#### *Return of representatives’ licences to the MAS*

One of the requirements in the SF Transitional Regulations and FA Transitional Regulations which is likely to have important practical implications is the requirement for the return of the CMS and FA representatives’ cancelled licences to the MAS.

The licences of CMS and FA representatives will be deemed to be cancelled on the date when the LCB Regulations and FA Regulations take effect (the “**appointed date**”). The representatives have 14 days to return their licences to the principals that they work for. The principals, in turn, have a month to return these cancelled licences to the MAS. Together with the return of the licences, the principals also have to submit a list of the names of the licensed representatives (and in the case of CMS principals, a list of their temporary representatives). Should the representatives fail to return their licences to their principals without reasonable excuse, the representatives (but not the principals) may be liable to a fine of up to \$25,000 for CMS representatives or \$12,500 for FA representatives.

It is noted that the CMS or FA licensee does not commit an offence for not returning its representatives’ cancelled licences to the MAS. Also, although the representative is entitled to the defence of reasonable excuse for failing to return his licence, it is unclear what would be acceptable as a reasonable excuse.

The period of 14 days provided for representatives to return their licences to their principals is relatively short. As such, it is envisaged that CMS and FA licence holders would have to start informing their representatives about this requirement early and make the necessary arrangements to ensure that their representatives meet the requisite deadline.

#### *Other transitional provisions*

If a party has applied for a CMS or FA licence and the application is pending with the MAS on the appointed date, the MAS will treat the pending application as an application under the new regulations. However, if an application was made for a CMS representative’s licence or FA representative’s licence, the MAS will treat the pending application as a lodgment of documents for notification of a CMS representative or FA representative respectively.

The SF Transitional Regulations and FA Transitional Regulations also deem certain classes of individuals to be “appointed representatives”. They are: (a) licensed CMS and FA representatives who have not received any notice of revocation or suspension from the MAS; (b) individuals who had submitted an application to renew their CMS or FA representative licences; or (c) individuals who, before the appointed date, carried on business on behalf of an exempt financial institution. Such individuals will have their particulars reflected on the public register as appointed CMS or FA representatives, provided that they act for only one principal or, if they act for more than one principal, the principals are all related corporations.

Individuals who are temporary representatives on the appointed date will also be deemed to be temporary representatives under the new public register. Under the new regulatory regime, temporary representatives are permitted to carry out their regulated business activities for a period of 6 months out of a 24-month period. In calculating the period for which such representatives are permitted to act, the MAS will disregard any period for which such representatives had already carried out the regulated activity under their old temporary representative's licence issued before the appointed date.

#### Licensing and business conduct requirements from 16 June 2009 consultation paper

The MAS released a consultation paper on 16 June 2009 (click [here](#) to refer to the document) which proposed the following changes:

- (a) removing the requirement for CMS or FA representatives to notify the MAS of the place where they keep their register of interests, and instead requiring their principals to keep records of the place(s) where the representatives' registers are kept;
- (b) alignment of the definition of the definition of "*customer assets*" in the LCB Regulations with that in the FA Regulations;
- (c) extending licensing exemption for the business activity of "*dealing in securities*" by persons dealing for own account to include persons who deal in securities for the account of their related corporations; and
- (d) increasing the maximum penalty under the LCB Regulations' general penalty provision from \$25,000 to \$50,000.

These proposals have been incorporated into the present proposed amendments to the LCB Regulations and FA Regulations.

#### Markets and clearing facility regulations

The MAS has proposed certain amendments to the Securities and Futures (Markets) Regulations to ease administrative burden on approved exchanges and recognised market operators by consolidating some of their *ad hoc* notification obligations into periodic reports. The Securities and Futures (Clearing Facility) Regulations will also be updated with consequential amendments to take into account the position limit provisions which an approved exchange is required to observe under the new Section 16A of the amended SFA.

#### References

Please click on the links below to refer to the relevant documents.

1. [The MAS' Policy Consultation on Draft Regulations pursuant to the Securities and Futures Act and the Financial Advisers Act dated 23 June 2009;](#)

2. **The MAS' Consultation Papers webpage (containing the 9 draft regulations issued in conjunction with Document 1 above);**
3. **The MAS' Consultation Paper on the Securities and Futures (Licensing and Conduct of Business) Regulations and the Financial Advisers Regulations dated 16 June 2009;**
4. **Client Update dated 2 February 2009 (on the new representative notification framework); and**
5. **Client Update dated 17 September 2009 (on changes to the SFA and FAA generally).**

If you have any queries on this update, or wish to discuss how the changes may potentially affect you or your business, please feel free to contact the corporate and finance lawyers in Drew & Napier LLC (please refer to the Directors' Profiles on our **website**), or any of the following lawyers:

**Gary Pryke**

Director (Banking &amp; Corporate)

T: +65 6531 4104

E: [gary.pryke@drewnapier.com](mailto:gary.pryke@drewnapier.com)**Eric Chan**

Associate Director (Banking &amp; Corporate)

T: +65 6531 2784

E: [eric.chan@drewnapier.com](mailto:eric.chan@drewnapier.com)

*The contents of this update are only intended to provide general information on the subject covered. Nothing in this publication should be treated as specific professional legal advice concerning any particular business, operational or other situations with which you might be faced. Drew & Napier LLC accepts no liability for, and does not guarantee the accuracy of, the information contained in this publication, and does not accept any liability for any loss or damage arising from any reliance thereon.*

## OUR BUSINESS GROUPS AND PRACTICE AREAS

## BANKING/GENERAL FINANCE

**David Ang**  
T +65 6531 2236  
F +65 6535 4864  
E david.ang@drewnapier.com

## Valerie Kwok

T +65 6531 2222  
F +65 6535 4864  
E valerie.kwok@drewnapier.com

## Sandy Foo

T +65 6531 4118  
F +65 6535 4864  
E sandy.foo@drewnapier.com

## BIOMEDICAL SCIENCES

**Tony Yeo**  
T +65 6531 2512  
F +65 6220 0324  
E tony.yeo@drewnapier.com

## BUILDING &amp; CONSTRUCTION

**Tan Liam Beng**  
T +65 6531 4139  
F +65 6533 3591  
E liambeng.tan@drewnapier.com

## CAPITAL MARKETS

**Sin Boon Ann**  
T +65 6531 2206  
F +65 6535 4906  
E boonann.sin@drewnapier.com

## Petrus Huang

T +65 6531 2208  
F +65 6535 4906  
E petrus.huang@drewnapier.com

## CHINA BUSINESS GROUP

**David Chin**  
T +65 6531 2304  
F +65 6535 1952  
E david.chin@drewnapier.com

## COMPETITION LAW

**Cavinder Bull, SC (contentious)**  
T +65 6531 2416  
F +65 6533 3591  
E cavinder.bull@drewnapier.com

## Lim Chong Kin (non-contentious)

T +65 6531 4110  
F +65 6535 4864  
E chongkin.lim@drewnapier.com

## CORPORATE

**David Ang**  
T +65 6531 2236  
F +65 6535 4864  
E david.ang@drewnapier.com

## Gary Pryke

T +65 6531 4104  
F +65 6535 4864  
E gary.pryke@drewnapier.com

## OTHER OFFICES

**Drewmarks Patents & Designs (Malaysia) Sdn Bhd**  
9th floor  
Bangunan Getah Asli (Menara)  
148 Jalan Ampang  
50450 Kuala Lumpur, Malaysia  
T +603 2162 2522/2162 2529  
F +603 2162 2804  
E drewmark@tm.net.my

## CORPORATE (cont'd)

**Sin Boon Ann**  
T +65 6531 2206  
F +65 6535 4906  
E boonann.sin@drewnapier.com

## Yeo Wee Kiong

T +65 6531 2500  
F +65 6535 4864  
E weekiong.yeo@drewnapier.com

## CORPORATE INSOLVENCY &amp; RESTRUCTURING

**Sushil Nair**  
T +65 6531 2410  
F +65 6533 9029  
E sushil.nair@drewnapier.com

## Manoj Sandrasegara

T +65 6531 4156  
F +65 6533 9029  
E manoj.sandra@drewnapier.com

## EMPLOYMENT &amp; IMMIGRATION

**Indranee Rajah, SC**  
T +65 6531 4100  
F +65 6532 7149  
E indranee.rajah@drewnapier.com

## FAMILY &amp; MATRIMONIAL

**Randolph Khoo**  
T +65 6531 2418  
F +65 6532 7149  
E randolph.khoo@drewnapier.com

## FUND MANAGEMENT, REIT &amp; PRIVATE EQUITY

**Petrus Huang**  
T +65 6531 2208  
F +65 6535 4906  
E petrus.huang@drewnapier.com

## INSURANCE &amp; REINSURANCE

**Gary Pryke**  
T +65 6531 4104  
F +65 6535 4864  
E gary.pryke@drewnapier.com

## INTELLECTUAL PROPERTY

**Dedar Singh Gill (Trade Marks)**  
T +65 6531 2507  
F +65 6533 0694  
E dedar.singh@drewnapier.com

## Morris John (Patents)

T +65 6531 2503  
F +65 6533 0694  
E mj@drewnapier.com

## INTERNATIONAL ARBITRATION

**Davinder Singh, SC**  
T +65 6531 2403  
F +65 6532 7149  
E davinder.singh@drewnapier.com

## Jimmy Yim, SC

T +65 6531 2504/2505  
F +65 6533 9029  
E jimmy.yim@drewnapier.com

## LITIGATION

**Davinder Singh, SC**  
T +65 6531 2403  
F +65 6532 7149  
E davinder.singh@drewnapier.com

## Jimmy Yim, SC

T +65 6531 2504/2505  
F +65 6533 9029  
E jimmy.yim@drewnapier.com

## Indranee Rajah, SC

T +65 6531 4100  
F +65 6532 7149  
E indranee.rajah@drewnapier.com

## PROJECT FINANCE

**Gary Pryke**  
T +65 6531 4104  
F +65 6535 4864  
E gary.pryke@drewnapier.com

## Valerie Kwok

T +65 6531 2222  
F +65 6535 4864  
E valerie.kwok@drewnapier.com

## Sandy Foo

T +65 6531 4118  
F +65 6535 4864  
E sandy.foo@drewnapier.com

## PROPERTY

**Zennifa Rahim**  
T +65 6531 2392  
F +65 6535 1952  
E zennifa.rahim@drewnapier.com

## SHIPPING &amp; INT'L TRADE

**Ian Koh**  
T +65 6531 2436  
F +65 6533 3591  
E ian.koh@drewnapier.com

## TAX &amp; PRIVATE CLIENT SERVICES

**Ong Sim Ho**  
T +65 6531 2250  
F +65 6535 4864  
E simho.ong@drewnapier.com

## TMT

**Lim Chong Kin**  
T +65 6531 4110  
F +65 6535 4864  
E chongkin.lim@drewnapier.com

## TRANSNATIONAL &amp; CROSS-BORDER WORK

**Julian Kwek**  
T +65 6531 2485  
F +65 6533 9029  
E julian.kwek@drewnapier.com

## PT Drewmarks Konsultama

Correspondence address:  
20 Raffles Place  
#17-00 Ocean Towers  
Singapore 048620  
T +65 6531 2503/6531 2504  
F +65 6533 0694  
E ip@drewnapier.com

## DrewCorp Services Pte Ltd

20 Raffles Place  
#09-01 Ocean Towers  
Singapore 048620  
ROC No. 200102492H  
T +65 6531 2266  
F +65 6533 1542 / 6533 7649  
E services@drewcorpservices.com