

LEGAL UPDATE

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LEGISLATION UPDATE

PROPOSED CHANGES TO SECURITIES AND FUTURES ACT AND FINANCIAL ADVISERS ACT

MAS holds third public consultation; releases draft Amendment Bills and Regulations

Introduction

The Monetary Authority of Singapore (the “**MAS**”) has on 11 October 2007 issued a policy consultation paper (the “**Third CP**”) proposing changes to the Securities and Futures Act (the “**SFA**”) and the Financial Advisers Act (the “**FAA**”). This is its third in a series of public consultations on the subject, which started last year.

The Previous Two Consultation Papers

The first consultation paper dated 25 September 2006 dealt with the establishment of a new notification framework and a public register for all representatives carrying out activities regulated under the SFA and the FAA.

The second consultation paper of 5 December 2006 proposed various changes, including:

- consolidation and rationalisation of the substantial shareholdings notification requirements in the SFA;
- expansion of a company’s liability for market misconduct committed by its employees whilst trading on its behalf;
- removal of the resale restriction for securities acquired under the accredited or institutional investors exemption when the issuer lists additional securities of the same class on an approved securities exchange and a prospectus is issued in connection with the offer and listing;
- establishment of a new recognition regime for foreign business trusts;
- removal of the audit requirement for half-year financial statements for debenture issuers; and
- introduction of a new collective investment scheme offered to accredited investors.

The Third Consultation Paper

The key policy changes proposed in the Third CP are as follows:

Compliance arrangements of CMS and FA licence holders

The MAS proposes to expressly require the chief executive officer and directors of holders of capital markets services (“**CMS**”) licences and financial

advisers (“FA”) licences to put in place compliance arrangements to ensure the licence holders’ compliance with the rules and regulations in the SFA and FAA.

Definition of “Qualified Investor”

The term “qualified investor” is to be tightened to limit the kinds of arrangements which fund managers may make in seeking to avail themselves of the CMS licensing exemption.

Licensing exemption for persons conducting leveraged foreign exchange trading and advising on corporate finance

The proposed amendments clarify that the licensing exemptions for these two activities apply only to persons who establish and operate out of a physical office in Singapore.

Extension of “fit and proper” requirements

Currently, the “fit and proper” requirements apply to directors and representatives of exempt foreign exchange traders, exempt fund managers, exempt corporate finance advisers and exempt FAs serving 30 accredited investors or less. The MAS proposes to extend the “fit and proper” requirements to the substantial shareholders of, or the persons having effective control over, such exempt persons.

Prohibition order (“PO”) regime

The PO regime is proposed to be extended such that POs may be issued in the following situations:

- against exempt financial institutions (as defined in the SFA) and their representatives;
- where the MAS has reason to believe that a person has contravened the SFA;
- where a person is convicted of an offence involving fraud or dishonesty in Singapore or elsewhere; or
- where a person is required to pay a civil penalty in respect of a market misconduct offence under Part XII of the SFA.

Additionally, it is proposed that POs could be issued to prohibit persons from assuming a management role, or from becoming a director or a substantial shareholder of a capital markets intermediary or FA.

Perpetual licensing regime

The MAS proposes to remove the requirement for renewals of CMS and FA licences every 3 years by the introduction of a perpetual licensing regime for CMS and FA licence holders. This proposal will align the licensing regime for corporates under the SFA and the FAA with that of other financial institutions regulated by the MAS.

Take over of licensees

The MAS proposes to require any potential owner or controller (whether in Singapore or elsewhere) of a CMS licence holder or FA licence holder to obtain the MAS’ prior approval before entering into an arrangement to take over the target entity.

Foreign regulators' inspections

The SFA and the FAA currently do not explicitly provide the MAS with the power to deal with requests from foreign regulators to inspect CMS and FA licence holders whose parent entities they supervise. The MAS now proposes to require foreign regulators to obtain the MAS' permission to inspect such CMS and FA licence holders. Inspections should be for the sole purpose of enabling the foreign regulators to perform the necessary supervision and would be subject to safeguards stipulated by the MAS, including confidentiality requirements and reciprocity by foreign regulators to the MAS' requests.

Flexibility in the scope of "Securities" and "Futures Contracts" definitions

These definitions are to be amended to enable the MAS to prescribe new products as "securities" and "futures contracts" or to exclude products from these definitions.

The Draft Legislation

Concurrently with the release of the Third CP, the MAS also released the following draft legislation (the "**Draft Legislation**") for public consultation:

Draft Securities and Futures (Amendment) Bill 2007 and Draft Financial Advisers (Amendment) Bill 2007

These draft amendment bills contain the bulk of the proposed legislative amendments and effect the policy proposals set out in the MAS' 25 September 2006, 5 December 2006 and 11 October 2007 consultation papers and the MAS' responses to feedback issued on 11 October 2007.

The MAS targets to table these amendment bills for first reading in Parliament in the first quarter of 2008.

Draft Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2007

These contain the proposed amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations mentioned in the Third CP. An example would be the amendment to the definition of "qualified investor".

Draft Financial Advisers (Amendment No. 2) Regulations 2007

These draft regulations set out the conditions under which foreign research houses may be exempted from the licensing requirements under the FAA in respect of the distribution of their research reports in Singapore. This was one of the policy proposals in the MAS' second consultation paper.

Draft Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) (Amendment) Regulations 2007

These draft regulations set out the policy proposals in the MAS' consultation paper entitled "Capital Requirements for Brokers Trading only in Commodities Futures Contracts" published on 27 August

2007. These relate to the base capital requirements for holders of a capital markets services licence trading only in commodity futures.

References

Please click on the following links to access the documents issued by the MAS:

- [Third CP](#)
- [Consultation paper to the Draft Legislation](#)
- [Full text of the Draft Legislation](#)
(Note: this link takes you to the MAS' consultation papers webpage, from which you may also obtain details about the first and second consultation papers.)

Comments on the Third CP and the Draft Legislation

The MAS is inviting comments on the Third CP and the Draft Legislation by **9 November 2007**. Drew and Napier LLC will be submitting a written response to the MAS. If you wish to submit any written comments to the MAS, please feel free to contact any of the persons listed below and we would be pleased to assist you.

If you would like more information about this matter or wish to discuss how it may potentially affect you or your business, please feel free to contact the banking and corporate lawyers in Drew & Napier LLC (please refer to the Directors' Profiles on our website), or any of the following lawyers:

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