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~ THE LAW SOCIETY OF SINGAPORE ~

**COMMENTS OF THE SOCIETY'S CORPORATE PRACTICE
COMMITTEE ON THE
MONETARY AUTHORITY OF SINGAPORE
POLICY CONSULTATION ON AMENDMENTS TO THE
SECURITIES AND FUTURES ACT AND THE FINANCIAL
ADVISERS ACT**



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1 INTRODUCTION

The Corporate Practice Committee of the Law Society (the "Committee") thanks the Monetary Authority of Singapore ("MAS") for the opportunity to give its views on the MAS Consultation Paper issued on 25 September 2006 concerning the proposed amendments to the Securities and Futures Act, Cap. 289 (the "SFA") and the Financial Advisers Act, Cap. 110 (the "FAA").

The Committee's comments and views are set out as follows.

2 COMMENTS ON PART I: REPRESENTATIVE NOTIFICATION FRAMEWORK

SECTION 1.3 PROPOSED NOTIFICATION FRAMEWORK

The Committee welcomes the proposed introduction of a representative notification framework to both licensed and exempt representatives (the "Proposed Framework"). Besides increasing efficiency from the regulatory point of view, we believe that the Proposed Framework achieves the stated aims of streamlining the regime and levelling the playing field for licensed and exempt representatives.

The Committee's specific comments on the features and processes of the Proposed Framework are as follows.

Paragraph 1.3.3: Key Features of the Proposed Notification Framework

Under paragraph 1.3.3(b), the relevant principal for each proposed representative would be required to certify to MAS that it has conducted reasonable checks and is satisfied that the proposed representative is fit and proper in accordance with MCG-G01 *Guidelines on Fit and Proper Criteria* (the "Guidelines").

Paragraph 1.3.3(d)(ii) further provides that the name of the proposed representative would normally be entered on the public register within 7-14 days of MAS' receipt of the relevant certification, unless MAS has reason to consider that the proposed representative is not fit and proper. In such a situation, the proposed representative's name would not be entered on the register within the stipulated time frame, but MAS would contact and notify the principal of any concerns within that time. If, *on the basis of information available* [emphasis added], MAS considers the proposed representative to be not fit and proper, MAS would have the power to refuse to enter the name of that individual on the public register.

If the available information which MAS may have recourse to in considering if a proposed representative is fit and proper extends beyond information over and above that required to be disclosed under the Guidelines, the Committee is of the view that it would be helpful for MAS to clarify to prospective representative licensees and their prospective principals the type of additional information involved. Such additional information, if necessary, should be objectively set out or subject to a reasonable standard.

Paragraph 1.3.4: Change of Activities and Change of Principals

The Committee notes that after the new principal's certification and notification to MAS, there may be a lag time of approximately 14 days before the name of the proposed representative is entered on the public register: footnote 2 to paragraph 1.3.4 on page 6 of the Consultation Paper.

The Committee believes that the 14-day lag time for a representative to be entered on the public register upon switching employment with another principal may be an additional cost to employment in the financial services industry, where high employee turnover rates are fairly common.

Although the Committee recognizes the suggestion in footnote 2 that prospective new principals can submit certifications and notifications in advance prior to the date, this suggestion may not be realistic, unless it entails prospective new principals submitting certifications and notifications while prospective representatives are still in employment with their original principals.

Additionally, is the time lag of 14 days necessary where a representative has been recently certified by his previous principal? An example of such a scenario is where a representative is employed with a principal for less than a month, before switching employment to another principal.

To streamline the process in the above scenario, the Committee recommends that MAS allows the new representative to be registered on the public register on notification by the new principal, on condition that the new principal provides the required certification within 2 weeks of the registration of the new representative on the public register. If the new representative subsequently switches employment a second time, the third principal perhaps ought not to be entitled to this expedience.

Paragraph 1.3.5: Principals Expected to Only Certify Fit and Proper Individuals

The Committee notes that the Proposed Framework places on the principals some of the onus of ensuring that proposed representatives are fit and proper. Paragraph 1.3.5 requires principals to carry out reasonable checks before issuing the requisite "fit and proper" certification, failing which, they would be subject to regulatory action.

Given the potential liability on the principals, an obvious concern would be the standard of care principals have to exercise. While the Guidelines are fairly exhaustive and clear as a guideline, the Committee would recommend that MAS further clarifies the level of conduct expected of the principals. For example, would declaration forms completed and signed by proposed representatives suffice, or are principals expected to conduct rigorous interviews based on the Guidelines? The Committee is also of the view that it would be helpful if the types of regulatory actions are spelt out in the Proposed Framework.

SECTION 1.4 MEASURES TO FACILITATE FIT AND PROPER CHECKS BY PRINCIPALS

The Committee welcomes the proposal to establish a public register of representatives, as it would be a useful tool for both the public in general and prospective principals.

The Committee's specific comments on the type of information and/or particulars of representatives that should be reflected on the public register are as follows.

Paragraphs 1.4.2 to 1.4.4

The Committee agrees with the proposal to establish a public register of representatives that would reflect any formal regulatory action(s) taken by MAS against any representative, as it would enhance the effectiveness of Prohibition Orders.

Paragraph 1.4.6: An Offence to Provide False or Misleading Information

The Committee agrees with the proposal to make it an offence for any individual to provide any false or misleading information concerning himself/herself to the principal when required to furnish information to the principal for the purposes of probity checks. This is necessary in light of the enhanced role of principals in ensuring that their representatives are fit and proper, and will help to ensure that the process of probity checks does not become paper exercises.

SECTION 1.6 TEMPORARY REPRESENTATIVES

Paragraph 1.6.1 states that a temporary representative's licence is only valid for a period of not more than 3 months from the date of its issue. MAS may grant temporary representative's licences for a total maximum period of 6 months within a 24-month period. Paragraph 1.6.3 envisages that principals intending to appoint temporary representatives would be subject to, *inter alia*, the notification process set out in paragraph 1.3.3 of the Consultation Paper for licensed and exempt representatives.

Given the short validity of temporary representatives' licenses, should the same 14-day lag time for MAS to process registration for licensed and exempt representatives apply to temporary representatives? The Committee recommends that the registration and notification process for temporary representatives be streamlined if a temporary representative is already licensed or otherwise regulated in a foreign jurisdiction with a regulatory regime comparable to Singapore's regulatory regime and especially if the foreign jurisdiction also maintains a public register similar to the proposed public register. Such foreign jurisdictions could include Australia, Hong Kong and the UK. In this connection, it may be helpful for the proposed public register to reflect any other foreign jurisdictions that a temporary representative is licensed to operate in.

3 COMMENTS ON PART II: EMERGENCY POWERS OF MAS

SECTION 2.2 APPOINTMENT OF ADVISERS TO AN APPROVED EXCHANGE ('AE') OR A DESIGNATED CLEARING HOUSE ('DCH')

The Committee notes that the proposal to empower MAS to appoint an external expert or consultant to advise an AE or DCH in the conduct of its business in specified circumstances serves as a good interim measure available to MAS before the stage is reached where it becomes necessary for MAS to exercise its other more critical emergency powers.

The Committee suggests that MAS consider specifying a time period for which the appointed external adviser is to advise the AE or DCH, perhaps on a case by case basis. If the AE or DCH fails to improve at the end of the specified period or on the recommendation of the appointed external adviser, MAS may then exercise its other emergency powers.

The Committee also suggests that MAS consider the feasibility for a review report prepared by the appointed external adviser at the end of the specified period, and the publication of that report if necessary or desirable. Such a review report may form the basis of reforms targeted at correcting longer term systemic risks.

SECTION 2.3 DISCLOSURE OF INFORMATION

The Committee is of the view that the proposal to expand sections 143 and 144 of the SFA to provide information-gathering powers for all circumstances where MAS exercises its emergency powers under sections 32, 34 and 81 of the SFA is straightforward and comprehensible.

The Committee notes that the expansion of information-gathering powers for MAS would be of great assistance to an external adviser, if appointed according to the proposal in section 2.2.