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DEVELOPING ASIAN CAPITAL MARKETS

ASIFMA ECMC – Summary of Industry Discussions and Consensus View with respect to the MAS Notice on Business Conduct Requirements for CF Advisors

Participants: ANZ, Bank of America, Barclays, BNP, CICC, CIMB, Citi, CITIC CLSA, Credit Suisse, Deutsche Bank, DBS, Goldman Sachs, Haitong International, HSBC, ING, Jefferies, JPMorgan, Macquarie, Morgan Stanley, Natixis, Nomura, Northern Trust, OCBC, SMBC Nikko, Standard Chartered, UBS, Wells Fargo

1. Introduction

On 23 February 2023, the Monetary Authority of Singapore (the “**MAS**”) issued the MAS Notice on Business Conduct Requirements for Corporate Finance Advisers (“**CF Advisors**”) (Notice No.: SFA 04-N21) (last updated on 21 June 2023) (the “**Notice**”) imposing mandatory baseline standards of due diligence and conduct requirements for CF Advisors. ASIFMA noted from feedback among market participants during meetings held biweekly between 27 July 2023 and 5 September 2023 that there were several concerns and queries raised with respect to the application, interpretation and implementation of the Notice, and formed a working group to discuss such concerns and queries. Certain (non-exhaustive) key issues discussed among the working group and the consensus reached are set out below.

2. Key Issues Discussed

2.1 Managing Conflicts of Interest

Paragraph 9 of the Notice provides that a CF Adviser, "when giving advice on corporate finance to a customer, must... identify and mitigate any potential or actual **material** conflict between its interests and the interests of the customer...". Paragraph 10 of the Notice provides that a reference to the CF Adviser's interest for purposes of Paragraph 9 includes any interest arising from an existing relationship between its customer and a prescribed list of persons, including but not limited to a CF Adviser's "specified personnel" and a "connected person" of such "specified personnel". It is further noted in MAS' response to Q13 of the frequently asked questions on the Notice (reissued on 21 August 2023) (the "**FAQs**") that "specified personnel" refers to employees who are involved in activities connected with advising on corporate finance for a particular transaction, and these include employees who are brought over the wall to support the specific transaction (e.g. placement team), as well as legal, compliance and other personnel who support that specific transaction.

Participants of the ASIFMA working group expressed concern that the extent and categories of persons which would fall within the above definition of "specified personnel", and the extension to connected persons (as this term is defined in section 2 of the Securities and Futures Act 2001 in relation to an “individual”) of such specified personnel, is very extensive.

Apart from CFA representatives who are employed by the CF Advisers, it is common for a CF Adviser to involve persons who support a specific transaction, but would not have a material role on the transaction (e.g. where they carry out administrative tasks, conduct customer due diligence or perform back-office operations). Additionally, the CF advisor may also involve persons (including deal team members who are not CFA representatives) who may be located outside of Singapore,

or may not be an employee of the CF Adviser (e.g. such person is employed by an affiliate of the CF Adviser).

Market participants agreed that notwithstanding that Q13 of the FAQs refers to employees involved in activities connected with advising on CF, including employees brought over the wall to support the specific transaction, as well as legal, compliance, and other personnel supporting that specific transaction, each CF Adviser should exercise its own discretion as to the extent that the conflicts checks are done, taking into account certain factors (including but not limited to the nature and materiality of such person's role in the specific transaction, his/her ability to influence business decisions made by the CF Adviser and/or the corporate finance advice given to the customer) to assess the likelihood of an interest held by such specified personnel or his/her connected person giving rise to a material conflict between the interests of the CF Adviser and the interests of the customer. For example, the participants of the ASIFMA working group agreed that certain employees or representatives of the CF Adviser or any other persons who only support the specific transaction, e.g. carry out administrative tasks, conduct customer due diligence, or perform back-office operations, would be less relevant in considering such material conflicts of interests in view of such person's inability to materially influence business decisions made by the CF Adviser and/or the corporate finance advice given to the customer in connection with an in-scope transaction.

2.2 Other Activities in relation to Offering Process or Capital Markets Products Offered

With reference to identification and mitigation of potential or actual conflicts of interest arising from a CF adviser's involvement in other activities in relation to the offering process or the capital markets products offered and its business in advising on corporate finance, it is noted that Paragraph 12 of the Notice raises two examples, namely (i) the allocation of the product offered; and (ii) issuance of research reports on the product offered. The ASIFMA working group brainstormed and discussed, and there was consensus among participants that, apart from two activities mentioned above, there are no other activities which CF Advisers generally conduct in relation to the offering process or the capital markets products offered which may give rise to any potential or actual conflict of interest arising from their business in advising on corporate finance.

In respect of the activity relating to the allocation of the product offered, there was consensus among participants that their existing policies/procedures relating to "allocation of securities" (or its equivalent) are intended to be responsive towards, among other things, mitigation and/avoidance of any potential, perceived and/or actual conflicts. In addition, there was consensus among participants that their respective current practices and procedures as it relates to the preparation and issuance of research reports are also in fact intended to be responsive towards, among other things, mitigation and/avoidance of any potential, perceived and/or actual conflicts. For example, there are information barriers in place to regulate the flow of information between research teams and CF Advisers, research reports are prepared independently by research analysts and reflect their independent views and CF Advisers do not have the ability to dictate the contents of the reports.

2.3 Due Diligence for Transactions Generally

The ASIFMA working group noted (i) the applicability of Paragraph 19 of the Notice, and (ii) MAS' response to Q7 of the FAQs.

In particular, the ASIFMA working group noted the MAS' prior feedback that its primary concern/rationale for the Notice was the protection of the Singapore retail public and accordingly, there was consensus among participants that Paragraph 19 would not apply in the following situations:

- (i) with respect to a securities offering where specified products are offered to any person in Singapore, Paragraph 19 would not apply so long as offers made into Singapore are limited to accredited investors, expert investors or institutional investors (each as defined under the Securities and Futures Act 2001 of Singapore ("**SFA**")). This is regardless whether offers are made to the retail public of other jurisdictions. For example, with respect to an IPO on an overseas exchange where specified products are being offered to retail investors in that local jurisdiction, Paragraph 19 would not apply so long as the offers made into Singapore are limited to accredited investors, expert investors or institutional investors; and
- (ii) with respect to a securities offering where specified products are not offered to any person in Singapore, Paragraph 19 would not apply.

Additionally, there was consensus among participants that in a scenario where Paragraph 19 is applicable in the context of an offshore securities offering (for example, an IPO on an overseas exchange where offers made into Singapore are made in reliance on the exemption under section 275(1A) of the SFA instead of being offered only to accredited investors, expert investors or institutional investors), and such transaction is subject to the laws, regulations, listing rules and regulatory oversight and guidance in the foreign jurisdiction, it would be more appropriate for due diligence to be conducted by CF Advisers to be done in accordance with such foreign laws, regulations, listing rules, offshore practices and/or guidance. In that respect, the participants of the ASIFMA working group agreed that the current language in Paragraph 19 is sufficiently broad to be interpreted to permit CF Advisers to follow the due diligence practices, and the laws, regulations, listing rules, offshore practices and/or guidance applicable to the transaction in such foreign jurisdiction.