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ASIFMA – Summary of Industry Discussions and Consensus View with respect to the application of the MAS Fair Dealing Guidelines to Financial Institutions' Businesses other than Asset Management and Advising on Corporate Finance

This Summary is written on behalf of the Asia Securities Industry & Financial Markets Association ("**ASIFMA**") in respect of the updated Guidelines on Fair Dealing – Board and Senior Management Responsibilities for Delivering Fair Dealing Outcomes to Customers (the "**Guidelines**") introduced by the Monetary Authority of Singapore ("**MAS**") on 30 May 2024.

ASIFMA has separately provided MAS with feedback (a) from members of ASIFMA's Asset Management Group and (b) from members of ASIFMA's Southeast Asia ECM Subcomittee, in the context of financial institutions' advising on corporate finance.

This Summary is intended to present members' approach in relation to certain aspects of the Guidelines in respect of sell-side business lines outside equity capital markets, investment banking and corporate advisory, in order to foster greater understanding and comprehensive compliance with the expectations therein.

Approach to proportionality and harmonisation under the Guidelines

ASIFMA members noted that the Guidelines should be approached in a proportionate manner, with each financial institution ("**FI**") individually considering how best to achieve the outcomes in light of its own business model, products and services. Given that the Guidelines now apply to all FIs, members welcome the flexibility that this approach affords. Nonetheless, members agreed that by applying the principle of proportionality, the Guidelines should be interpreted in line with international standards to ensure that FIs with global reach are not unduly burdened by differing compliance expectations across jurisdictions.

Members of ASIFMA strongly support the alignment of the MAS' approach to Fair Dealing with international standards to enable a coordinated approach to cross border fairness and consumer protection. However, members agreed that the Guidelines should not impose higher standards than those already in place in the FIs' home jurisdictions, especially if the offshore FI is already subject to regulation in their home jurisdiction and their home jurisdiction's regulations offer sufficient consumer protection. This harmonised approach ensures that Singaporean FIs are not disadvantaged compared to their international counterparts. Therefore, where corporate accredited investors ("**AI**") or institutional investors ("**II**") clients are serviced by an overseas FI, members intend to adopt the approach of following the existing framework taken by the overseas FI rather than applying any similar or incremental business conduct requirements set out in the Guidelines.

We have also highlighted below some specific instances where consistency with international standards is essential to prevent undue regulatory overreach and to maintain the competitive position of Singapore FIs (see example below in section 3(b)(ii) on regulation 32C of the Financial Advisers Regulations).

MAS commentary: MAS would like to clarify that FIs are expected to achieve all the outcomes of the Guidelines. The guiding principle is that the outcomes in the Guidelines are fundamental principles that apply to all FIs, financial products and services and customers.

While FIs may consider its practices in other jurisdictions, FIs should assess the applicability in the local context to meet the outcomes in the Guidelines. In this respect, the FI may apply their global practices where these are sufficient to meet the expectations set out in the Guidelines. For avoidance of doubt, the FI should apply the stricter of the requirements. Where there are specific regulations in place, FIs should still ensure that the principles in the Guidelines are considered and implemented where applicable.

1. Right of Review Clauses

Paragraph 4.5 of the Guidelines stipulates the requirements concerning the exercise of Right of Review ("**RoR**") clauses.

ASIFMA members noted that the definition of an RoR clause is widely defined in the Guidelines and adds significant compliance burden on FIs. Excessive disclosure could overwhelm clients and hinder their ability to understand and react appropriately to key information. This would diminish the effectiveness of such disclosure. It is critical that disclosures remain clear and concise to serve their intended purpose effectively.

Accordingly, members noted that:

- The MAS allows a proportionate approach to be applied to different classes of customers. Specifically:
    - **Institutional Investors and Corporate AIs**: When dealing with such clients, members propose to adopt the approach of simplifying the RoR documentation process on the basis that such parties generally possess the relevant knowledge and experience in the market to understand the terms and conditions of transactions and will typically have legal advisors to review documentation and to protect their interests.
    - **Individual Accredited Investors and Private Banking Clients**: For these clients, members propose to adopt the approach of having a risk disclosure statement that addresses potential changes in case of market disruption events to ensure that disclosures are both comprehensive and appropriately tailored to the sophistication of the client.
- Where clients are serviced or booked by a Singapore-based FI, but the contractual relationship is maintained with an entity outside of Singapore (e.g., an entity based in London), members propose that Singapore-based FIs should have discretion to determine whether or not the requirements for senior management approval governing the exercise of the RoR clause should apply.

2. Retrospective application

In relation to transactions executed under a master agreement prior to 30 May 2024 (for example, an ISDA Master Agreement), members propose to only disclose risks in respect of new transactions entered into on or after 30 May 2024. For avoidance of doubt, members will not be required to disclose risks pertaining to the master agreement unless it specifically concerns the new transactions.

3. Other questions and comments

a. <u>Proposed course of action on Distributor Due Diligence Responsibilities</u>

Under paragraph 2.3 of the Guidelines, distributors are obligated to perform comprehensive due diligence on financial products before distribution. Since paragraph 2.2 of the Guidelines mandates requirements

for product manufacturers, members noted that the obligation for due diligence arises only when FIs act as distributors upon receiving distribution rights from a product manufacturer.

Where foreign related Financial Institution ("**FRC**") entity-manufactured products are marketed under a cross-border FRC arrangement, members intend to take the approach of only applying the Guidelines at the level of the distributing Singapore FI, and not to the manufacturer.

MAS commentary: In relation to cross-border arrangements, Singapore FIs distributing the product are to ensure that products distributed through them in Singapore fulfil the Guidelines, and make the appropriate arrangements with the foreign offices/FRCs and their representatives under the cross-border arrangements.

b. Application of the Guidelines to Research Services

i. Proportionality approach

Participants noted that the Guidelines are intended to be applied "on a proportionate basis" relevant to the nature of the services provided by the FI. In particular, ASIFMA noted the MAS' recognition that, in light of the "varied nature of FIs and their business models", in certain cases, "some aspect of the Guidelines may be calibrated accordingly".[1] There is some uncertainty surrounding the application of the Guidelines to investment research services offered by FIs ("**Research Services**"), given the Guidelines' broad scope of application and the fact that the MAS' current guidance on the Guidelines does not yet address specific business models such as investment research distribution in any detail.

In most global FIs, Research Services could include the provision of research reports or other products (such as access to research analysts in connection with research conferences, calls and corporate access events) by the business to a wide variety of clients globally. While we appreciate that Research Services offered by FIs do not fall entirely out of the scope of the Guidelines, members agreed that certain Outcomes would not apply in a research context.

Outcome Two requires FIs to offer products and services that are suitable for their target customer segments. However, members noted that this is inapplicable to Research Services offered by many FIs because:

(i) research, by its very nature, is designed to provide solely impersonal advice. Research Services are provided as an ancillary service to the markets and banking clients without consideration of their individual needs or circumstances. It functions to offer independent, objective and in-depth research on certain securities and financial instruments in order to help clients make informed investment decisions as part of the performance of their own due diligence on any financial product they intend to trade;

(ii) the research divisions of FIs are often distinct from trade execution, trading or brokerage services, meaning that they do not onboard or have unique client relationships of their own. As a result, there are no "target customer segments" against which the research product can be assessed for suitability. Furthermore, the remuneration structure within most global FIs is designed to ensure

[1] MAS Response to the Consultation on Fair Dealing Guidelines, paragraph 2.5.

there is no conflict of interests. In particular, research analysts are compensated only for those activities and services intended to benefit the FI's investor clients without consideration of the analyst's contribution to Investment Banking or other FI's equity or debt origination businesses; and

(iii) Research Services of most global FIs are not targeted at retail clients but at AIs and/or IIs, who are professional investors with extensive knowledge of financial products.

Outcome Three requires that customers are served by competent representatives. Given the inherently global nature of Research Services, most global FIs will require research personnel to hold all licenses and registrations in the jurisdiction in which they are physically located that are required for the activities in which they engage. Further, most global FIs apply the controls globally for consistency and compliance with global regulations. As discussed further in (b) below, in the interests of proportionality, members intend to adopt the approach of following local regulatory requirements where the foreign research house is based, or meeting the global standards, without carrying out additional assessment and safeguards under Outcome Three.

ASIFMA members also propose to adopt the approach of applying their usual controls with a view to ensuring independence, lack of conflicts and the avoidance of misrepresentation.

ii. Sufficiency of compliance with Financial Advisers Regulations

For FIs operating a global platform, Research Services are often inevitably conducted and developed by a combination of onshore and offshore entities. This is recognised in the Singapore regulatory context: under regulation 32C of the Financial Advisers Regulations, foreign research houses are permitted to provide investment advice through research reports to Singapore-based investors without requiring a financial adviser's licence, provided (amongst other things) that: (i) the Singapore financial adviser is licensed or exempt; (ii) the foreign research house is regulated in the foreign countries for the activities it performs; and (iii) the research contains a statement to the effect that the Singapore financial adviser accepts legal responsibility for the contents of the research provided.

Given the global nature of Research Services and the extensive distribution model across jurisdictions, it would be administratively burdensome to apply a specific set of rules on Research Services with any Singapore nexus. Members intend to adopt the approach of ensuring compliance with requirements under regulation 32C (in particular, that the foreign research house is regulated in its home jurisdiction) without undertaking further assessment of the suitability of Research Services undertaken by foreign research houses. Members intend to apply the principle of proportionality consistently to all research activities, including those produced onshore in Singapore.

Outcome Four requires customers receive clear, relevant and timely information to accurately represent the products and services offered and delivered, including detailed disclosure as set out in paragraph 4.3.2 of the Guidelines. Members noted that the research investment firms already have a regulatory obligation to maintain written policies and procedures to ensure that: (i) purported facts in research reports are based on reliable information, (ii) any recommendation or opinion has a reasonable basis, and is accompanied by a clear explanation of any valuation method, and a fair presentation of the risks that may

impede the achievement of the recommendation, rating or price targets, and (iii) rating systems are clearly defined. The market is by now familiar with the scope and content expectations, and there are well established practices and controls (such as the review process by supervisory analysts) to comply with these requirements. Members intend to take the approach of not applying the specific content and disclosure expectations under the Guidelines (as elaborated in section 4.2 and 4.3 of the Guidelines) to Research Services.

c. Application to dealing in capital markets products

Paragraph 4.2.3 of the Guidelines requires FIs to implement additional safeguards when serving customers with limited knowledge or understanding of financial products and/or non-English speaking customers.

Members are of the view that paragraph 4.2.3 should only apply to distributors who deal directly with the customers and that it does not apply to manufacturers, as they require manufacturers to establish processes to obtain feedback from the distributors, as per paragraph 2.2.2. However, the banking sector traditionally relies upon and imposes such requirements on the distributors, and there might not be distribution agreements in place in the private banking or structured product space.

In addition, manufacturers are required to test the suitability of a product before launch to determine if it will meet the financial objectives of the client segment. After the launch, the manufacturers are to monitor customers' feedback. These additional requirements can be difficult for manufacturers to comply with, as they necessitate direct client interaction.

Note: In light of these considerations, ASIFMA members seek the MAS' guidance to provide examples on how to operationalise these requirements.

MAS commentary: The Guidelines sets out some examples, e.g., establishing processes to obtain feedback from the product's distributors who have interacted directly with customers, with a view to improve the design of the product for these groups of target customers. This could be formalised through manufacturers' agreements with their distributors. ASIFMA may refer to the examples in the Guidelines for more guidance.

d. Application to financial advisory services

FIs dealing with AIs are exempted from the certain requirements in the Financial Advisers Act, Financial Advisers Regulations and related MAS Notices. These exemptions include:

- **Section 34 of the Financial Advisers Act**: Obligation to disclose product information to clients, as outlined in the MAS Notice on Information to Clients and Product Information Disclosure (Notice No. FAA-N03) and the MAS Practice Note on the Disclosure of Remuneration by Financial Advisers (Practice Notice No. FAA-PN01);
- **Section 36 of the Financial Advisers Act**: Requirements regarding recommendations by licensed financial advisers, as detailed in the MAS Notice on Recommendations on Investment Products (Notice No. FAA-N16);
- **Section 45 of the Financial Advisers Act**: Obligation for licensed financial advisers to disclose certain interests in specified products; and

- **Regulation 18B of the Financial Advisers Regulations**: Product due diligence.

ASIFMA members agreed that FIs selling and providing financial advice on investment products to AI clients should continue to be exempt from similar requirements in the Guidelines. This exemption is justified as AIs are generally better informed and more capable of accessing resources to protect their own interests when making investment decisions.

e. Option to engage the Financial Industry Disputes Resolution Centre Ltd ("**FIDReC**")

The jurisdiction of FIDReC to mediate customer complaints is defined within its terms of reference. Members agreed that FIs that do not maintain business relationships with customers qualifying as eligible complainants under these terms should not be obligated to inform such customers about the option to resolve disputes through FIDReC.