

CONSULTATION PAPER

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Proposed Amendments to MAS' Investigative and Other Powers under the Various Acts

MAS

Monetary Authority of Singapore

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1 PREFACE

1.1 MAS is proposing amendments under the Financial Institutions (Miscellaneous Amendments) Bill ("FI Amendment Bill"). The FI Amendment Bill seeks to introduce amendments to various pieces of legislation, namely – the Banking Act ("BA"), Credit Bureau Act¹, Financial Advisers Act ("FAA"), Insurance Act ("IA"), Payment Services Act ("PS Act"), Securities and Futures Act ("SFA"), Trust Companies Act ("TCA") and the upcoming new omnibus Act for the financial sector (the "new Act")² (collectively, "the relevant Acts"). The FI Amendment Bill is necessary to amend the supervision and enforcement³ powers under the various Acts, as well as to update the various Acts where necessary.

1.2 The proposed amendments set out in this consultation are –

- (a) Part A: Proposed enhancements to MAS' investigative powers
- (b) Part B: Clarification of applicability of MAS' reprimand powers under the SFA, FAA and TCA
- (c) Part C: Proposed expansion of MAS' powers to issue written directions under the SFA to regulated financial institutions ("FIs") conducting unregulated business

¹ Further to the Banking (Amendment) Act 2020, a consequential amendment will be made to the definition of "merchant bank" in the Credit Bureau Act.

² Please refer to "Consultation Paper on a New Omnibus Act for the Financial Sector" (P002-2020), which was published on 21 July 2020 and can be found in this link [<https://int.mas.gov.sg/publications/consultations/2020/consultation-paper-on-the-new-omnibus-act-for-the-financial-sector>], for details on the new Act. Over the years, the Monetary Authority of Singapore Act (Cap 186) ("MAS Act") was amended to include new legislative provisions that applied to financial institutions across the financial sector. With the introduction of the new Act, the provisions currently in the MAS Act that relate to MAS' regulatory oversight of different financial institution classes will be moved to the new Act.

³ The consultation paper on enhancement of MAS' inspection and gatekeeping powers in the SFA, FAA and TCA was published on 18 September 2015, and MAS' responses to feedback for the consultation paper were published on 7 November 2016 and 9 July 2018.

1.3 MAS invites comments from participants in the financial industry and other interested parties.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like:

- (i) their whole submission or part of it (but not their identity), or**
- (ii) their identity along with their whole submission,**

to be kept confidential, please expressly state so in the submission to MAS. MAS will only publish non-anonymous submissions. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

1.4 Please submit your comments to the consultation paper by 1 August 2021 at the link: <https://go.gov.sg/proposed-investigative-powers>. For technical difficulties or any other queries, please email to MAS_Legis_Consultation@mas.gov.sg.

2 PART A: PROPOSED ENHANCEMENTS TO MAS' INVESTIGATIVE POWERS

2.1 In line with MAS' commitment to the effective enforcement of laws and regulations under its purview, MAS proposes several enhancements to its investigative powers. The enhancements are intended to strengthen MAS' evidence-gathering powers and facilitate greater inter-agency coordination.

2.2 These enhancements will be achieved through the proposed amendments to the relevant Acts summarised in **Table 1**. We will address each proposed amendment in detail below.

Table 1: Summary of the proposed amendments

Type of power	New Act	BA	IA	TCA	PS Act	FAA	SFA
Requiring any person to provide information for the purposes of investigation	✓	✓	○	○	○	○	○
Requiring any person to appear for examination	✓	✓	✓	✓	✓	○	○
Recording statement from person at examination	✓	✓	✓	✓	✓	○	○
Obtaining a court warrant if a person fails to appear for examination with no reasonable excuse	✓	✓	✓	✓	✓	✓	✓
Entering premises without warrant	✓	✓	✓	✓	✓	○	○
Obtaining warrants to seize evidence	✓	✓	✓	○	✓	○	○
Transferring evidence between MAS and other agencies	✓	✓	✓	✓	✓	○	○

Legend

✓: Proposed introduction of new power or provision in the relevant Act

○: Proposed amendment of an existing power or provision

2.3 **Annex B** sets out the proposed provisions that will be included in the new Act. These provisions will be mirrored as appropriate in the rest of the relevant Acts.

Power to require information from any person for the purposes of investigation

2.4 MAS proposes introducing in the BA and the new Act the power for MAS to require information, including information in electronic form, from any person for the purposes of an investigation. The existing inspection and investigative powers in section 43 to section 44A of the BA enable MAS to obtain information from banks or subsidiaries under inspection or investigation. Inspection powers proposed under the new Act apply to FIs regulated by MAS but not employees of such FIs. However, there may be instances where information relevant to an investigation is in the possession of persons who are outside the reach of the existing powers, such as entities that do not fall within the scope of the powers, or employees of the FIs. While the FI under inspection or investigation can direct its employees to provide information to MAS, this would not be helpful in cases where the evidence lies with ex-employees over whom the FI has no authority, or even with employees who simply refuse to comply. The power to require information, including information in electronic form, from any person is thus necessary for MAS to carry out effective investigations.

2.5 MAS will also be updating the existing similar provisions in the IA, PS Act, TCA, SFA and FAA to make explicit that the scope of those powers includes information that exist in electronic form.

Question 1. MAS seeks comments on the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act.

Provisions relating to examinations of persons and recording of statements

Power to require any person to appear for examination and statement-recording

2.6 Conducting examinations⁴ allows an investigator to obtain first-hand information from individuals on matters that may not be recorded in documentary form and thus cannot be procured by compelling the production of documents. The SFA and FAA already contain express powers of examination and the procedural requirements for such examinations, which allow MAS investigators to carry out examinations effectively under these Acts.

2.7 To ensure the efficacy of all investigations conducted by MAS under any of the relevant Acts, MAS proposes aligning the BA, IA, PS Act, TCA and the new Act with the SFA and FAA by also expressly stating in those Acts that MAS has the power to examine individuals and take statements, and specifying the manner in which this power is to be exercised.

Power to obtain a court warrant if examinee fails to appear for examination

2.8 To ensure that MAS' power to examine witnesses is effective, it is important for MAS to have the ability to secure attendance at interviews. MAS proposes to include under the relevant Acts the ability for MAS to report any failure by an examinee to attend an interview to a Magistrate, who may then issue a warrant ordering the examinee to attend the interview. Failure to comply with the warrant would result in these individuals being subject to penalties for contempt of Court, in addition to the penalties for non-compliance with MAS' requirement to attend an examination.

⁴ The "examinations" referred to in this consultation paper and in the relevant Acts are oral interviews conducted by investigators.

Giving a copy of the written record to the examinee

2.9 Existing provisions in the SFA and FAA state that an MAS investigator may, if requested, provide the examinee with a copy of a written record of the examination ("**recorded statement**"), subject to any conditions that the investigator may impose. However, these provisions do not specify when MAS must provide the copy of the recorded statement after the request is made. MAS' existing practice is to provide a copy of the recorded statement at such time as it determines is appropriate, e.g. when the disclosure will not prejudice ongoing investigations. MAS proposes to amend existing provisions in the SFA and FAA, and introduce new provisions into the other relevant Acts, to make explicit its current practice.

Question 2. MAS seeks comments on the proposals to:

- (a) give MAS the power to require any person to appear for examination and the recording of statements under the BA, IA, PS Act, TCA and the new Act;
- (b) give MAS the power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts; and
- (c) provide explicitly that an MAS investigator will provide a copy of the written record (i.e., recorded statement) at such time he determines, upon the request by an examinee.

Power to enter premises without a warrant

2.10 MAS proposes to include in the BA, IA, PS Act, TCA and the new Act, provisions allowing any MAS investigator or authorised officer to enter any premises without a warrant, if the investigator has reasonable grounds to suspect that the premises are, or have been, used by a person being investigated by MAS. For the avoidance of doubt, this power would not empower MAS to use force to gain entry. Under these provisions, MAS may require any person on the premises to produce evidence which the officers consider relevant to the investigation or to state where such evidence can be found.

2.11 Generally, MAS intends to exercise the power to enter premises without a warrant where it assesses that there is a real risk of evidence being destroyed or tampered with, if a production order is issued in advance of entry.

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2.12 MAS also proposes to remove the requirement in the SFA and the FAA for MAS to provide two days' notice to the occupier of the premises before entry can be made without a warrant⁵. Providing notice before exercising the power to enter premises creates an undue risk that incriminating evidence may be destroyed or concealed prior to entry, which would defeat the purpose of exercising the power of entry in the first place.

Question 3. MAS seeks comments on the proposals to:

- (a) allow MAS investigators to enter premises without a warrant in the BA, IA, PS Act, TCA and the new Act; and
- (b) remove the current SFA and FAA requirement of a 2-day notice before entry can be made and to mirror this amendment in the proposed provisions for the other relevant Acts.

Power to obtain a court warrant to seize evidence

2.13 MAS proposes to introduce provisions in the BA, IA, PS Act and the new Act that will enable MAS to obtain a warrant from the Magistrate to seize evidence, including electronic evidence, from premises when (i) a person has failed to comply with an order to produce such evidence; or (ii) if there is a risk that evidence will be concealed, removed, tampered with or destroyed if an order is made for the same to be produced. These provisions will also set out expressly what MAS may be authorised to do under the warrant. As the warrant can only be obtained with the Magistrate's approval, this ensures that (i) warrants will only be granted when there are grounds to do so; and (ii) the scope of the warrant will be carefully calibrated and appropriate in terms of its reach.

⁵ Currently under the SFA and FAA, the notice requirement does not apply to breaches under Part XII of the SFA (market misconduct) or Part III of the FAA (conduct of business).

2.14 Currently, MAS already has the ability to obtain a court warrant to seize evidence under the SFA, FAA and TCA. In this regard, MAS will be clarifying in the SFA and FAA that the scope of the warrant which can be issued by the Magistrate includes electronic evidence. As the scope of the warrant under the TCA is considerably narrower than under the other Acts⁶, MAS proposes to amend the TCA to align the scope of the warrant with that under the other relevant Acts and to clarify that the warrant issued by the Magistrate also applies to electronic evidence.

Question 4. MAS seeks comments on the proposals to allow MAS to apply to the courts for a warrant to seize evidence in specified circumstances under the BA, IA, PS Act and the new Act, and to align the scope of the warrant that can be issued by the court under the TCA with that under the other relevant Acts.

Powers relating to transfer of evidence between MAS, the Police and the Public Prosecutor

2.15 The SFA and FAA currently contain the following provisions on the transfer of evidence between MAS, the Police (which includes the Commercial Affairs Department) and the Public Prosecutor:

- (b) Under the SFA, sections 168B and 168C provide for the *two-way transfer* of evidence for market misconduct offences under Part XII of the SFA. This means that MAS can transfer evidence obtained under the SFA to the Police or the Public Prosecutor for Part XII criminal investigations or proceedings, and the Police can also transfer to MAS evidence obtained under the Criminal Procedure Code (“CPC”) for Part XII civil penalty investigations or actions.
- (c) Under the FAA, section 76B provides for a *one-way transfer* of evidence collected by MAS to the Police or the Public Prosecutor for the purpose

⁶ Unlike the SFA and FAA, the power to obtain a warrant under the TCA does not provide that the warrant may include the following: (i) require any person to provide an explanation of any relevant book, or to state, to the best of that person’s knowledge and belief, where any such book may be found; (ii) search any person on the premises or any relevant equipment or article and (iii) remove from those premises for examination any relevant book or any relevant equipment or article.

of criminal investigations or proceedings for all offences under the FAA.

The Police is unable to transfer evidence collected under the CPC to MAS.

2.16 To facilitate the efficient and expedient enforcement of offences under the relevant Acts, MAS proposes to expand the current transfer of evidence provisions.

Expanding the transfer of evidence from the Police to MAS for Part VII civil penalty investigations or proceedings under the SFA

2.17 MAS works closely with the CAD under the Joint Investigation Arrangement, by exercising criminal investigative powers under the CPC to jointly investigate offences under the SFA and FAA, and referring appropriate cases to the Attorney General's Chambers ("AGC") for decision-making on criminal prosecution and civil penalty actions.⁷

2.18 Under the SFA, offences under Part VII (Disclosure of Interests) are similar to those under Part XII (Market Misconduct), in that both can be either criminally prosecuted or the subject of civil penalty action. However, the existing transfer of evidence provisions in the SFA only provide for the transfer of evidence obtained under the CPC to MAS for investigations and civil penalty actions in relation to Part XII offences, but not Part VII offences. In order to improve the efficiency of enforcement actions for Part VII offences, there is a need to expand the current provisions to ensure that where evidence obtained under the CPC reveals the commission of Part VII offences, the evidence gathered can be transferred to MAS for the purpose of investigating and commencing civil penalty action where appropriate.

⁷ The CAD-MAS Joint Investigations Arrangement ("JIA") was launched in March 2015. Under the JIA, CAD and MAS co-investigate all offences under the SFA and FAA, and jointly make decisions on whether to recommend criminal prosecution or civil penalty action to AGC. Civil penalty actions are available under the SFA, but not the FAA.

Enabling the transfer of evidence from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations and transfer of CPC evidence to MAS for regulatory actions

2.19 In general, SFA offences and offences under the other relevant Acts may be the subject of criminal prosecution by AGC or regulatory actions by MAS. For offences under Part VII and Part XII of the SFA, MAS has the added option of taking civil penalty actions against offenders, other than taking regulatory actions or leaving AGC to pursue criminal prosecution of the offenders.

2.20 There may be situations where investigations commenced by MAS under the relevant Acts reveal serious misconduct that warrants criminal prosecution and conversely, there may be situations where investigations that are commenced by the Police and AGC may be more appropriately dealt with by MAS through regulatory actions. Enabling the transfer of evidence between agencies allows enforcement action to be taken expeditiously, without duplication of investigative efforts.

2.21 To this end, section 168B of the SFA will be expanded to enable the transfer of evidence collected by MAS in cases involving *any* offence under the SFA (and not only offences under Part XII) to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings. We will also introduce an equivalent provision in the other relevant Acts, save for the FAA, as section 76B of the FAA already provides for such a transfer.

2.22 The amendments will also allow other authorised persons or officers of law enforcement agencies exercising criminal investigative powers under the CPC to transfer to MAS the evidence obtained under the powers, in the event the evidence reveals that offences under the relevant Acts have been committed. This enables MAS to be able to take the appropriate regulatory action against the offender, without having to duplicate the investigations already carried out by the other enforcement agency.

Question 5. MAS seeks comments on the proposals to:

- (a) expand the scope of section 168C(1) of the SFA to allow the transfer of evidence collected under the CPC from the Police to MAS for Part VII civil penalty investigations or proceedings;
- (b) expand the scope of section 168B(1) of the SFA to allow the transfer of evidence (relating to *any* offence under the SFA) from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings, and to replicate this provision in the other relevant Acts (other than the FAA); and
- (c) enable evidence collected under the CPC to be transferred to MAS for regulatory actions under each relevant Act.

3 PART B: CLARIFICATION OF APPLICABILITY OF MAS' REPRIMAND POWERS UNDER THE SFA, FAA and TCA

3.1 Under section 334 of the SFA, section 97 of the FAA and section 72 of the TCA (collectively, the "Reprimand Provisions"), MAS may reprimand a relevant person where MAS is satisfied that the relevant person is guilty of misconduct, and if MAS thinks it is necessary in the interest of the public or for the protection of investors, policy owners or protected parties of licensed trust companies, as the case may be.

3.2 A "relevant person" includes any FI that is licensed, registered, authorised, approved, recognised or exempted (as applicable) under the SFA, FAA or TCA, as well as any employee, officer, partner or representative (as applicable) of each FI.

3.3 MAS is proposing amendments to the Reprimand Provisions to make clear our policy intent that MAS may reprimand any person who was a "relevant person" *at the time of the misconduct*. The amendments serve to provide clarity to the industry that all persons who had been "relevant persons" at the time of the misconduct are subject to the Reprimand Provisions, even if they have left the FI (in the case of individuals) or are no longer licensed, registered, authorised, approved, recognised or exempted (in the case of FIs) when the misconduct is discovered or when the reprimand is issued. This is to minimise situations where a "relevant person" leaves the employment of his principal, or ceases its regulatory status (in the case of an FI) to avoid MAS' censure and maintain a clean record.

3.4 The draft amendments to the Reprimand Provisions are set out in **Annex C**.

Question 6. MAS seeks comments on the proposed amendments to the Reprimand Provisions.

4 PART C: PROPOSED EXPANSION OF MAS' POWERS TO ISSUE WRITTEN DIRECTIONS UNDER THE SFA TO REGULATED FINANCIAL INSTITUTIONS CONDUCTING UNREGULATED BUSINESS

4.1 Regulated financial institutions⁸ may conduct unregulated businesses, such as offering products that are not regulated by MAS (e.g. bitcoin futures and other payment token derivatives traded on overseas exchanges). There are risks from such unregulated businesses that need to be managed. For instance, losses from conducting these unregulated business could adversely affect a financial institution's ability to meet its obligations to customers in regulated activities. In addition, customers may not be aware that some of the businesses conducted by a regulated financial institution are not regulated.

4.2 In the case of regulated financial institutions conducting the unregulated business of offering bitcoin futures or other payment token derivatives, MAS has issued guidance to regulated financial institutions⁹ to adopt risk-mitigating measures, such as maintaining appropriate levels of collateral and disclosing to customers that those products are not regulated when they conduct such unregulated businesses with retail investors.

4.3 Beyond issuing guidance, MAS proposes to introduce a power in the SFA to issue legally-binding directions to regulated FIs and their representatives in relation to conducting unregulated business. MAS intends to exercise such powers where it considers it necessary in the public interest or in the interest of the investors. The draft amendments to the SFA are enclosed in **Annex D**.

Question 7. MAS seeks comments on the draft amendments to the SFA to empower MAS to issue directions to regulated FIs and their representatives conducting unregulated business.

⁸ These refer to holders of a capital markets services licence conducting regulated activities under the SFA.

⁹ FIs are expected to have implemented these measures by 30 June 2020.

Annex A

LIST OF QUESTIONS

[Right click on the list below and select 'update field', 'update entire table' to automatically populate this list]

Question 1. MAS seeks comments on the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act.....6

Question 2. MAS seeks comments on the proposals to:8

- (a) give MAS the power to require any person to appear for examination and the recording of statements under the BA, IA, PS Act, TCA and the new Act;
- (b) give MAS the power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts; and
- (c) provide explicitly that an MAS investigator will provide a copy of the written record (i.e., recorded statement) at such time he determines, upon the request by an examinee.

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- (a) allow MAS investigators to enter premises without a warrant in the BA, IA, PS Act, TCA and the new Act; and
- (b) remove the current SFA and FAA requirement of a 2-day notice before entry can be made and to mirror this amendment in the proposed provisions for the other relevant Acts.

Question 4. MAS seeks comments on the proposals to allow MAS to apply to the courts for a warrant to seize evidence in specified circumstances under the BA, IA, PS Act and the new Act, and to align the scope of the warrant that can be issued by the court under the TCA with that under the other relevant Acts.10

Question 5. MAS seeks comments on the proposals to:13

- (a) expand the scope of section 168C(1) of the SFA to allow the transfer of evidence collected under the CPC from the Police to MAS for Part VII civil penalty investigations or proceedings;
- (b) expand the scope of section 168B(1) of the SFA to allow the transfer of evidence (relating to *any* offence under the SFA) from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings, and to replicate this provision in the other relevant Acts (other than the FAA); and
- (c) enable evidence collected under the CPC to be transferred to MAS for regulatory actions under each relevant Act.

Question 6. MAS seeks comments on the proposed amendments to the Reprimand Provisions.....14

Question 7. MAS seeks comments on the draft amendments to the SFA to empower MAS to issue directions to regulated FIs and their representatives conducting unregulated business..... 15

Annex B

**PROPOSED PROVISIONS ON PROPOSED ENHANCEMENTS TO MAS'
INVESTIGATIVE POWERS**

DISCLAIMER: This Annex is in draft form and is subject to clearance. It is also subject to review by the Attorney-General's Chambers.

THE NEW ACT¹⁰

PART [X]

INVESTIGATIVE POWERS OF AUTHORITY

Division 1 — Interpretation of this Part

Interpretation

1. In this Part, unless the context otherwise requires —

“book” includes any record, register, document or other record of information, and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or in any other electronic form or otherwise;

“computer” has the same meaning as in the Computer Misuse Act (Cap. 50A);

¹⁰ These provisions are intended for insertion into the new Act referred to in the Consultation Paper on the New Omnibus Act for the Financial Sector, issued by MAS on 21 July 2020.

“data” has the same meaning as in the Computer Misuse Act, but does not include book;

“officer”, in relation to the Authority, includes any person employed by the Authority in an executive capacity;

“prescribed written law” means this Act, or any of the following Acts, and any subsidiary legislation made under this Act or those Acts:

- (a) Banking Act;
- (b) Credit Bureau Act 2016 (Act 27 of 2016);
- (c) Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B);
- (d) Finance Companies Act;
- (e) Financial Advisers Act;
- (f) Financial Holding Companies Act 2013 (Act 13 of 2013);
- (g) Insurance Act;
- (h) Monetary Authority of Singapore Act;
- (i) Payment Services Act (Act 2 of 2019);
- (j) Securities and Futures Act;
- (k) Trust Companies Act (Cap. 336);
- (l) such other Act as the Authority may prescribe.

Division 2 — General

Investigation by Authority

2.—(1) The Authority may conduct such investigation as it considers necessary or expedient for any of the following purposes:

- (a) to exercise any of its powers or to perform any of its functions and duties under this Act;

- (b) to ensure compliance with this Act or any written direction issued under this Act; or
- (c) to investigate an alleged or suspected contravention of any provision of this Act or any written direction issued under this Act.

(2) The Authority may exercise any of its powers under this Part for the purposes of conducting an investigation under subsection (1) notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law.

(3) A requirement imposed by the Authority in the exercise of its powers under this Part shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Any person who complies with a requirement imposed by the Authority in the exercise of its powers under this Part shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(5) No civil or criminal action, other than proceedings for an offence under section 12 or 19, shall lie against any person —

- (a) for giving assistance to the Authority, including answering questions, if he had given the assistance or answered the questions in good faith in compliance with a requirement imposed under this Part;
- (b) for providing information or producing books to the Authority if he had provided the information or produced the books in good faith in compliance with a requirement imposed by the Authority under this Part; or

- (c) for doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Authority under this Part.

(6) In this section, “requirement imposed by the Authority” includes a requirement imposed by an investigator under Division (3) or (4).

Confidentiality of investigation reports

3.—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority in respect of any investigation under section 2 and is provided by the Authority to the person under investigation (referred to in this section as the investigated person), the report shall not be disclosed by the investigated person or, if the investigated person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made —

- (a) by the investigated person to any officer or auditor of that investigated person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that investigated person;
- (b) by any officer or auditor of the investigated person to any other officer or auditor of that investigated person, solely in connection with the performance of their duties in that investigated person; or
- (c) to such other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the investigated person, any of its officers or auditors or the person to whom

disclosure is approved, and that person shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the investigated person.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both, unless he proves that —

- (a) the disclosure was made contrary to his desire;
- (b) where the disclosure was made in any written form, he had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and
- (c) where the disclosure was made in an electronic form, he had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

Self-incrimination and savings for advocates and solicitors

4.—(1) A person is not excused from disclosing information to the Authority or, as the case may be, an investigator under Division (3) or (4), under a requirement made of him under any provision of this Part on the ground that the disclosure of the information might tend to incriminate him.

(2) Where a person claims, before making a statement disclosing information that he is required to under any provision of this Part to the Authority or, as the case may be, an investigator under Division (3) or (4), that the statement might tend to incriminate him, that statement shall not be admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 12(3).

(3) For the avoidance of doubt, the making of a statement by a person mentioned in subsection (1) is not to be regarded as caused by any inducement, threat or promise mentioned in section 258(3) of the Criminal Procedure Code (Cap. 68), merely because the Authority or, as the case may be, an investigator under Division (3) or (4), had earlier informed the person pursuant to subsection (1) that he was not excused from disclosing information on the ground that such disclosure of information might tend to incriminate him.

(4) Nothing in this Part shall —

- (a) compel an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97), to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity; or
- (b) authorise the taking of any such document or other material which is in his possession.

(5) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act, who refuses to disclose the information or produce the document or other material referred to in subsection (3) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

(6) Any advocate and solicitor who contravenes subsection (5) shall be guilty of an offence.

Division 3 — Examination of persons

Requirement to appear for examination

5.—(1) For the purpose of an investigation under this Part, the Authority may, in writing, require a person —

- (a) to give to the Authority all reasonable assistance in connection with the investigation; and
- (b) to appear before an officer of the Authority duly authorised by the Authority for examination and to answer questions.

(2) A requirement in writing imposed under subsection (1) shall state the general nature of the matter referred to in subsection (1).

(3) If that person fails to appear as required, the Authority may report the matter to a Magistrate who may then, in his discretion, issue a warrant ordering the person to appear.

Proceedings at examination

6. The provisions of this Division shall apply where, pursuant to a requirement made under section 5 for the purposes of an investigation under this Part, a person (referred to in this Division as the examinee) appears before another person (referred to in this Division as the investigator) for examination.

Requirements made of examinee

7.—(1) The examinee may be examined on oath or affirmation by the investigator and may, for that purpose, be required to take the oath or affirmation administered by the investigator.

(2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make are true.

(3) The examinee may be required by the investigator to answer a question that is put to him at the examination and is relevant to a matter that the Authority is investigating, or is to investigate, under this Part.

Examination to take place in private

8.—(1) The examination shall take place in private and the investigator may give directions as to who may be present during the examination or part thereof.

(2) A person shall not be present at the examination unless he is —

- (a) the investigator or the examinee;
- (b) a person approved by the Authority; or
- (c) entitled to be present by virtue of a direction under subsection (1).

Record of examination

9.—(1) The investigator may, and shall if the examinee so requests, cause a record to be made of statements made at the examination.

(2) If a record made under subsection (1) is in writing or is reduced to writing —

- (a) the investigator may require the examinee to read the record, or to have it read to him, and may require him to sign it;
- (b) the investigator shall, if requested in writing by the examinee to give to the examinee a copy of the written record, provide a copy of the written record without charge at such time the investigator may determine, subject to such conditions as the investigator may impose.

Giving copies of record to other persons

10.—(1) The Authority may, subject to such conditions or restrictions as it may impose, give a copy of a written record of the examination, or such a copy together with a copy of any related book, at such time the investigator may determine, to an advocate and solicitor acting on behalf of a person who is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination relates.

(2) If the Authority gives a copy to a person under subsection (1), the person, or any other person who has possession, custody or control of the copy or a copy of it, shall not, except in connection with preparing, beginning or carrying on, or in the course of, any proceedings —

- (a) use the copy or a copy of it; or
- (b) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

(3) The Authority may, subject to such conditions or restrictions as it may impose, give to a person other than a person mentioned in subsection (1), a copy of a written record of the examination, or such a copy together with a copy of any related book, at such time the investigator may determine.

Copies given subject to conditions

11. If a copy of a written record or a book is given to a person under section 9(2), 10(1) or 10(3) subject to conditions or restrictions imposed by the Authority, the person, and any other person who has possession, custody or control of the copy or a copy of it, shall comply with the conditions or restrictions.

Offences under this Division

12.—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement under section 5 or 7(3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) A person who, without reasonable excuse —

- (a) refuses or fails to comply with a requirement of an investigator under section 9(2)(a); or
- (b) refuses or fails to comply with section 10(2) or 11,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) A person who, in purported compliance with the provisions of this Division, or in the course of examination of the person, furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) It shall be a defence to a prosecution for an offence under subsection (3) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

(5) A person who, without reasonable excuse, obstructs or hinders the Authority or another person in the exercise of any power under this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

Division 4 — Powers to obtain information

Power of Authority to order production of books or data

13. —(1) For the purpose of an investigation under this Part, the Authority may by notice in writing —

- (a) require a person in whose possession or power books relating to any matter under investigation is believed to be —

- (i) to provide information or produce the books at the time and place specified in the notice; or
 - (ii) to give any officer of the Authority who is authorised by the Authority to do so (referred to in this section as an investigator) access to the books; or
 - (iii) in the case of books that are in electronic form —
 - (A) to produce a copy of the books, at the time and place stated in the notice; or
 - (B) to give the investigator access to a copy of the books; or
- (b) require a person who is believed to have power to access books relating to any matter under investigation that is contained in or available to a computer, from the computer —
- (i) to produce a copy of the books, at the time and place stated in the notice; or
 - (ii) to give the investigator access to a copy of the books; or
- (c) require a person in whose possession or power data relating to any matter under investigation is believed to be or who is believed to have the power to access any such data that is contained in or available to a computer, from that computer—
- (i) to authenticate the data; and
 - (ii) to produce the data, at the time and place stated in the notice.

Power to enter premises without warrant

14.—(1) In connection with an investigation under this Part, any officer of the Authority who is authorised by the Authority to do so (referred to in this section as an investigator) and such other officers or persons as the Authority

has authorised in writing to accompany the investigator (each referred to in this section as an authorised person) may enter any premises.

(2) No investigator and no authorised person accompanying the investigator shall enter any premises in the exercise of the powers under this section unless the investigator has reasonable grounds for suspecting that the premises are, or have been, occupied by a person who is being investigated under this Part.

(2A) For the avoidance of doubt, premises that are, or have been, occupied by a person who is being investigated under this Part, include premises that are, or have been, used by the person.

(3) The power of entry conferred by subsection (1) shall only be exercised upon production of —

- (a) evidence of the investigator's authorisation and the authorisation of every authorised person accompanying him; and
- (b) a document containing information indicating the subject-matter and purpose of the investigation and the nature of the offences created by section 19.

(4) Without prejudice to section 13, an investigator or authorised person entering any premises under this section may —

- (a) take with him such equipment as appears to him to be necessary;
- (b) require any person on the premises to produce any book or data which the investigator or authorised person considers relates to any matter relevant to the investigation;
- (c) require any person on the premises to state, to the best of the person's knowledge and belief, where any such book or data is to be found; and

- (d) take any step, or issue to any person on the premises any requirement, which appears to be necessary for the purpose of preserving or preventing interference with any book or data which the investigator or authorised person considers relates to any matter relevant to the investigation.

Warrant to seize books, etc.

15.—(1) A Magistrate may, on the application of the Authority —

- (a) issue a warrant, if the Magistrate is satisfied that there are reasonable grounds to suspect that there is, on any particular premises, any book or data —
 - (i) the production of which has been required by the Authority under section 13 or by an investigator or authorised person under section 14, but which has not been produced in compliance with that requirement; or
 - (ii) which, if required by the Authority under section 13 or by an investigator or authorised person under section 14 to be produced, will be concealed, removed, tampered with or destroyed; and
- (b) if the Magistrate is also satisfied that there are reasonable grounds to suspect that there is, on those premises, any other book or data which relates to any matter relevant to the investigation concerned, direct that the powers exercisable under the warrant shall extend to that other book or data.

(2) A warrant issued under subsection (1) shall authorise the Authority or any person named in the warrant, with or without assistance —

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and to break open and search anything, whether a fixture or not, in the premises;
- (c) to take possession of, or secure against interference, any book or data that appears to be a book or data referred to in subsection (1)(a) or, where applicable, subsection (1)(b);
- (d) to require any person to provide an explanation of any book or data that appears to be a book or data referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or to state, to the best of that person's knowledge and belief, where any such book or data may be found;
- (e) to search any person on those premises, if there are reasonable grounds to suspect that the person has in his possession any book or data that appears to be referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or any equipment or article which relates to any matter relevant to the investigation concerned;
- (f) to remove from those premises for examination any book or data that appears to be a book or data referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or any equipment (including computer) or article which relates to any matter relevant to the investigation concerned;
- (g) to access, inspect and check the operation of a computer in the premises specified in the warrant that the Authority or any person named in the warrant has reasonable cause to suspect is containing or has been used to contain any book or data that appears to be a book or data referred to in subsection (1)(a) or, where applicable, subsection (1)(b);

- (h) to use any such computer, or cause any such computer to be used—
 - (i) to search any book or data that appears to be a book or data referred to in subsection (1)(a) or, where applicable, subsection (1)(b), that is contained in or available to such computer; and
 - (ii) to make a copy of any such book or data;
- (i) to prevent any other person from gaining access to, or using, any such computer (including by changing any username, password or other authentication information required to gain access to the computer); or
- (j) to order any person —
 - (i) to stop accessing or using or to not access or use any such computer; or
 - (ii) to access or use any such computer only under such conditions as the Authority or any person named in the warrant may specify.
- (k) to order any of the following persons to provide any assistance mentioned in subsection (2A):
 - (i) any person whom the Authority reasonably suspects of using, or of having used, such computer;
 - (ii) any person having charge of, or otherwise concerned with the operation of, the computer;
 - (iii) any person whom the Authority reasonably believes has knowledge of or access to any username, password or other authentication information required to gain access to the computer.

(2A) For the purposes of subsection (2)(k), the types of assistance are as follows:

- (a) assistance to gain access to the computer (including assistance through the provision of any username, password or other authentication information required to gain access to the computer);
- (b) assistance to prevent a person (other than the investigator or authorised person) from gaining access to, or using, the computer, including assistance in changing any username, password or other authentication information required to gain access to the computer.

(3) The Authority or any person named in the warrant to execute it may allow any equipment or article referred to in subsection (2)(f) to be retained on the premises specified in the warrant to be searched, subject to such conditions as the Authority or that person may require.

(4) Any person entering any premises by virtue of a warrant issued under subsection (1) may take with him such equipment as appears to him to be necessary.

(5) Where a warrant is issued under subsection (1), and there is no one present at the premises specified in the warrant to be searched when the Authority or any person named in the warrant proposes to execute the warrant, the Authority or that person shall, before executing the warrant —

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the premises of the intended entry into the premises; and
- (b) subject to subsection (6), give the occupier or the occupier's legal or other representative a reasonable opportunity to be present when the warrant is executed.

(6) If the Authority or any person named in the warrant to execute it is unable to inform the occupier of the premises of the intended entry into the premises, the Authority or that person shall, when executing the warrant, leave a copy of the warrant in a prominent place on the premises.

(7) On leaving any premises specified in a warrant issued under subsection (1), the Authority or any person named in the warrant to execute it shall, if the premises are unoccupied or if the occupier of the premises is temporarily absent, leave the premises as effectively secured as the Authority or that person found the premises.

(8) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

(9) In this section —

“occupier”, in relation to any premises specified in a warrant issued under subsection (1), includes any person whom the Authority or any person named in the warrant to execute it reasonably believes to be the occupier of those premises;

“premises” includes any structure, building, aircraft, vehicle or vessel.

Powers where books or data are produced or seized

16.—(1) This section shall apply where —

(a) books or data are produced to the Authority —

(i) pursuant to a requirement of the Authority under section 13 or of an investigator or authorised person under section 14(4); or

(ii) during an entry into any premises by an investigator or authorised person under section 14;

- (b) under a warrant issued under section 15, the Authority or a person named therein —
 - (i) takes possession of books or data; or
 - (ii) secures books or data against interference; or
- (c) under a previous application of subsection (6), books or data are delivered into the possession of the Authority or a person authorised by it.

(2) If subsection (1)(a) applies, the Authority may take possession of any of the books or data.

(3) The Authority or, where applicable, a person referred to in subsection (1)(b) may —

- (a) inspect, and may make copies of, or take extracts from, any of the books or data;
- (b) use, or permit the use of, any of the books or data for the purposes of any proceedings;
- (c) retain possession of any of the books or data for so long as is necessary —
 - (i) for the purposes of exercising a power conferred by this section;
 - (ii) for a decision to be made about whether or not any proceedings to which the books or data concerned would be relevant should be instituted; or
 - (iii) for such proceedings to be instituted and carried on; and
- (d) require any book or data which the Authority or person referred to in subsection (1)(b) is satisfied relates to any matter relevant to an investigation under this Part, and which is stored in any

electronic form, to be produced in a form which can be taken away and which is visible and legible.

(4) No person shall be entitled, as against the Authority or, where applicable, a person referred to in subsection (1)(b) to claim a lien on any of the books or data, but such a lien is not otherwise prejudiced.

(5) While the books or data are in the possession of the Authority or, where applicable, the person referred to in subsection (1)(b), the Authority or person —

- (a) shall permit another person to inspect at all reasonable times such of the books or data (if any) as the second-mentioned person would be entitled to inspect if they were not in possession of the Authority or the first-mentioned person; and
- (b) may permit any other person to inspect any of the books or data.

(6) Unless subsection (1)(b)(ii) applies, an investigator or authorised person referred to in subsection (1)(a) or a person referred to in subsection (1)(b) may deliver any of the books or data into the possession of the Authority or of a person authorised by the Authority to receive them.

(7) Without prejudice to sections 14(4) and 15(2)(d), where subsection (1)(a) or (b) applies, the Authority, an investigator or authorised person referred to in subsection (1)(a), a person referred to in subsection (1)(b) or a person into whose possession the books or data are delivered under subsection (6), may require —

- (a) if subsection (1)(a) applies, a person who so produced any of the books or data; or
- (b) in any other case, a person who was a party to the compilation of any of the books or data,

to explain to the best of his knowledge and belief any matter about the compilation of any of the books or data, or to which any of the books or data relate.

Powers where books or data not produced

17. Where a person fails to comply with a requirement imposed by the Authority under section 13 to produce any book or data, the Authority may require the person to state, to the best of his knowledge and belief —

- (a) the place where such book or data may be found; and
- (b) the person who last had possession, custody or control of such book or data and the place where that person may be found.

Copies of or extracts from books or data to be admitted in evidence

18.—(1) Subject to this section, a copy of or extract from a book or data referred to in this Division that is proved to be a true copy of the book or data, or of the relevant part of the book or data, is admissible in evidence as if it were the original book or data, or the relevant part of the original book or data.

(2) For the purposes of subsection (1), evidence that a copy of or extract from a book or data is a true copy of the book or data, or of a part of the book or data may be given by a person who has compared the copy or extract with the book or data, or the relevant part of the book or data and may be given orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

Offences under this Division

19.—(1) A person who, without reasonable excuse, refuses or fails to comply with any requirement imposed under this Division, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) A person who, in purported compliance with a requirement under this Division, furnishes information or makes a statement that is false or

misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It shall be a defence to a prosecution for an offence under subsection (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and not misleading.

(4) Any person, who conceals, destroys, mutilates or alters any book, equipment or article relating to a matter that the Authority is investigating or about to investigate under this Part or who, where any such book, equipment or article is within the territory of Singapore, takes or sends the book, equipment or article out of Singapore, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(4A) Any person, who conceals, destroys, mutilates or alters any data relating to a matter that the Authority is investigating or about to investigate under this Part, or who, where such data is contained in or available to a computer within the territory of Singapore, transfers the data out of the computer to another computer outside the territory of Singapore such that the data is no longer contained or available to the first-mentioned computer, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) A person who, without reasonable excuse, obstructs or hinders the Authority in the exercise of any power under this Division, or obstructs or hinders a person who is exercising any power under section 14(1), or (4) or executing a warrant issued under section 15, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Any occupier or person in charge of any premises who fails to provide, to any person who enters those premises under section 14(1) or under a

warrant issued under section 15(1), all reasonable facilities and assistance for the effective exercise of that person's powers under section 14(1), or (4) or under the warrant, as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

Division 5 — Transfer of Evidence

Interpretation of this Division

20. In this Division —

“Commercial Affairs Officer” means a Commercial Affairs Officer appointed under section 64 of the Police Force Act (Cap. 235);

“law enforcement agency” has the same meaning as section 2(1) of the Criminal Procedure Code (Cap. 68);

“police officer” means a member of the Singapore Police Force.

Evidence obtained by Authority may be used in criminal investigations and proceedings

21.—(1) Notwithstanding the provisions of any written law or any rule of law, the Authority may furnish any book, data, document, written record of any examination or other information obtained by the Authority in the exercise of its powers under this Part to —

- (a) a police officer;
- (b) a Commercial Affairs Officer; or
- (c) the Public Prosecutor,

for the purposes of any investigation into or criminal proceedings against a person for an alleged or suspected contravention of any provision under this Act.

(2) For the avoidance of doubt, any book, data, document, written record of examination or other information furnished by the Authority under subsection (1) shall not be inadmissible in any criminal proceedings by reason only that it was first obtained by the Authority in the exercise of its powers under this Act, and the admissibility thereof shall be determined in accordance with the rules of evidence under written law and any relevant rules of law.

Evidence obtained under the Criminal Procedure Code may be used in regulatory actions and proceedings

22.—(1) Notwithstanding the provisions of any written law or any rule of law, any book, data, document, statement or other information obtained by—

- (a) a police officer or a Commercial Affairs Officer in the exercise of his powers under Divisions 1 and 2 of Part IV of the Criminal Procedure Code;
- (b) a person in the exercise of his powers (where applicable) under sections 15, 20, 39, or 40 of the Criminal Procedure Code;
- (c) an officer of a law enforcement agency in the exercise of any power conferred on a police officer under the Criminal Procedure Code in relation to the investigation of any offence, the exercise of which is authorised under any written law other than the Criminal Procedure Code,

may be furnished to the Authority, for the purposes set out in subsection (2).

(2) Any book, data, document, statement or other information may be furnished to the Authority under subsection (1) for any of the following purposes:

- (a) for the Authority to take, or consider whether to take, any action (including the conduct of any investigation under this Act) in respect of –
 - (i) any alleged or suspected contravention of any provision under this Act, or
 - (ii) any alleged or suspected misconduct;
- (b) for the Authority's assessment of whether a person is a fit and proper person under the Guidelines on Fit and Proper Criteria; and
- (c) where an appeal has been lodged under the provisions of this Act against any decision taken by the Authority as mentioned in paragraphs (a) and (b) –
 - (i) for submission to the Minister or Appeal Advisory Committee; or
 - (ii) for the purposes of preparation of the Authority's response to the appeal.

(3) For the purposes of subsection (2) –

“decision” means any action by or direction of the Authority;

“Guidelines on Fit and Proper Criteria” means the document by that title issued by the Authority and published on its website, as revised from time to time;

“misconduct” means –

- (a) the contravention of –
 - (i) any condition or restriction imposed under this Act;
 - (ii) any direction made by the Authority under this Act; or

- (iii) any code, guideline, policy statement or practice note issued under section [X]¹¹;
- (b) the failure by an officer of a person to discharge any duty or function of his office;
- (c) the commission of an offence under sections [X]¹² or [X]¹³ or
- (d) any act or omission of a person which gives rise to a ground for the Authority to exercise any power under the Act against the person.

Division 6 — General Powers of Authority

Power of Authority to make regulations

23.—(1) The Authority may make regulations for anything that is required, permitted or necessary for carrying out the purposes and provisions of this Part.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations for and with respect to any matters relating to section 13 and section 14(4)(b) of the Act, including prescribing —

- (a) any matters concerning the production of the books or data or a copy of the books or data, or giving access to books or data under section 13;

¹¹ Section [X] refers to the provision at Section 35 of Annex C to the Consultation Paper on the New Omnibus Act for the Financial Sector, issued by MAS on 21 July 2020 (the “**NOA Consultation Paper**”).

¹² Section [X] refers to section 28B of the MAS Act, which is to be ported over to the New Omnibus Act.

¹³ Section [X] refers to the provision at Section 29 of Annex C to the NOA Consultation Paper.

- (b) any matters concerning the production of the books or data under section 14(4)(b);
- (c) the form and manner in which a person must produce the books or data or a copy of the books or data or give access to books or data under section 13;
- (d) the form and manner in which a person must produce the books or data under section 14(4)(b).

Annex C

PROPOSED PROVISIONS ON CLARIFICATION OF APPLICABILITY OF MAS' REPRIMAND POWERS UNDER THE SFA, FAA and TCA

DISCLAIMER: This Annex is in draft form and is subject to clearance. It is also subject to review by the Attorney-General's Chambers.

SECURITIES AND FUTURES ACT

Power of Authority to reprimand for misconduct

334. – (1) Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the interest of the public, or a section of the public or for the protection of investors, reprimand the relevant person.

(2) In this section –

“misconduct” means –

- (a) the contravention of –
 - (i) any provision of this Act;
 - (ii) any condition or restriction imposed under this Act;
 - (iia) any direction made by the Authority under this Act;
 - (iii) any code, guideline, policy statement or practice note issued under section 321; or
 - (iv) any business rules of an approved exchange, a licensed trade repository or an approved clearing house, or the listing rules of an approved exchange;

-
- (b) the failure by an officer of a relevant person to discharge any duty or function of his office; or
 - (c) the commission of an offence under section 331 or 332(1);

“officer” –

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;

“relevant person” means –

any person that was any one of the following at the time of the misconduct:

- (a) an approved exchange;
- (b) a recognised market operator;
- (c) a licensed trade repository;
- (d) a licensed foreign trade repository;
- (e) an approved clearing house;
- (f) a recognised clearing house;
- (g) an approved holding company;

-
- (h) a holder of a capital markets services licence to carry on business in any regulated activity;
 - (i) an exempt person;
 - (j) an approved trustee mentioned in section 289;
 - (k) an authorised benchmark administrator;
 - (l) an exempt benchmark administrator;
 - (m) an authorised benchmark submitter;
 - (n) an exempt benchmark submitter;
 - (o) a designated benchmark submitter; or
 - (p) ~~any~~ an employee, officer, partner or representative of any person mentioned in paragraphs (a) to (o).

FINANCIAL ADVISERS ACT

Power to reprimand for misconduct

97. – (1) Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the public interest or for the protection of investors or policy owners, reprimand the relevant person.

(2) In this section –

“misconduct” means –

- (a) the contravention of –
 - (i) any provision of this Act;

-
- (ii) any condition or restriction of a financial adviser's licence or an exemption granted under this Act;
 - (iia) any written direction made by the Authority under this Act;
 - (iib) any condition or restriction imposed on an appointed or provisional representative under section 23K; or
 - (iii) any code, guideline, policy statement or practice note issued or published under section 64;
- (b) the failure by an officer of a licensed financial adviser or an exempt financial adviser to discharge any duty or function of his office; or
 - (c) the commission of an offence under section 83 or 84(1);

“officer” –

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;

“relevant person” means ~~any~~ –

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any person that was any one of the following at the time of the misconduct:

- (a) a licensed financial adviser;
- (b) an exempt financial adviser; or
- (c) a representative, or supervisor of a financial adviser, or officer or partner of a licensed financial adviser or an exempt financial adviser any person mentioned in paragraph (a) or (b).

TRUST COMPANIES ACT

Power to reprimand for misconduct

72. – (1) Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the interest of the public or of the protection of the protected parties of licensed trust companies, reprimand the relevant person.

(2) In this section –

“misconduct” means –

- (a) the contravention of –
 - (i) any provision of this Act;
 - (ii) any condition or restriction of a licence or an exemption granted under this Act;
 - (iii) any written direction issued by the Authority under this Act; or
 - (iv) any code, guideline, policy statement or practice note issued or published under section 74;
- (b) the failure by an officer of a licensed trust company or an exempt person to discharge any duty or function of his office; or
- (c) the commission of an offence under section 64 or 65(1);

“officer” –

- (a) in relation to a body corporate, means a director, chief executive, manager, resident manager, secretary or other similar officer of the body corporate, and includes a person purporting to act in any such capacity; or

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-
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;

“relevant person” means ~~any~~ —

any person that was any one of the following at the time of the misconduct:

- (a) a licensed trust company ~~or~~;
- (b) an exempt person; ~~or~~
- (c) ~~any~~ an employee, officer or partner of such ~~licensed trust company or exempt person~~ person mentioned in paragraph (a) or (b).

Annex D

PROPOSED PROVISIONS ON PROPOSED EXPANSION OF MAS' POWERS TO ISSUE WRITTEN DIRECTIONS UNDER THE SFA TO REGULATED FINANCIAL INSTITUTIONS CONDUCTING UNREGULATED BUSINESS

DISCLAIMER: This Annex is in draft form and is subject to clearance. It is also subject to review by the Attorney-General's Chambers.

SECURITIES AND FUTURES ACT

Power of Authority to issue directions in relation to unregulated businesses

101E – (1) The Authority may, if it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue written directions with respect to the carrying on of unregulated businesses, either of a general or specific nature, to any holder of a capital markets services licence, business representative, or class of such persons, to comply with such requirements as the Authority may specify in the written directions.

(2) Without prejudice to the generality of subsection (1), any written direction may be issued with respect to —

- (a) the scale of the operation of the unregulated business;
- (b) the standards to be maintained by the person concerned in the conduct of his unregulated business;
- (c) the activities of the person concerned with respect to the unregulated business, including the manner, method and place of

soliciting business by the person and their business representatives and the conduct of such solicitation;

(d) the manner in which the person concerned conducts unregulated business, conflicts of interest involving the person concerned and the unregulated business customers, and the duties of the person concerned and their business representatives when making recommendations in respect of the unregulated business;

(e) the type and frequency of submission of financial returns and other information to be submitted to the Authority; and

(f) the qualifications, experience and training of business representatives,

and the person to whom such direction is issued shall comply with the direction.

(3) Any person who contravenes any of the directions issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

(4) It shall not be necessary to publish any direction issued under subsection (3) in the *Gazette*.

(5) In this section –

“stipulated product activity” means carrying on any of the following activity (whether as principal or agent):

(a) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing of,

subscribing for, entering into, effecting, arranging, or underwriting any stipulated products; or

(b) providing or agreeing to provide any service where the person providing the service has, under an arrangement with another person (the customer), possession or control of the stipulated products of the customer and carries out one or more of the following functions for the customer:

- (i) settlement of transactions relating to the stipulated products;
- (ii) collecting or distributing dividends or other pecuniary benefits derived from ownership or possession of the stipulated products;
- (iii) paying tax or other costs associated with the stipulated products;
- (iv) exercising rights, including without limitation voting rights, attached to or derived from the stipulated products;
- (v) any other function necessary or incidental to the safeguarding or administration of the stipulated products;

(c) any activity that is, or belongs to a class of activities that is, prescribed for the purposes of this definition

but does not include —

(A) the provision of services to a related corporation or connected person, so long as none of the stipulated products in respect of which such services are provided is —

- (i) held on trust for another person by the related corporation or connected person;
- (ii) held as a result of any services mentioned in paragraph (b)(i) to (iv) above, provided by the related corporation or connected person to another person; or
- (iii) beneficially owned by any person other than the related corporation or connected person; and

(B) any other conduct the Authority may, by order, prescribe;

“stipulated product” means any product but does not include any capital markets product;

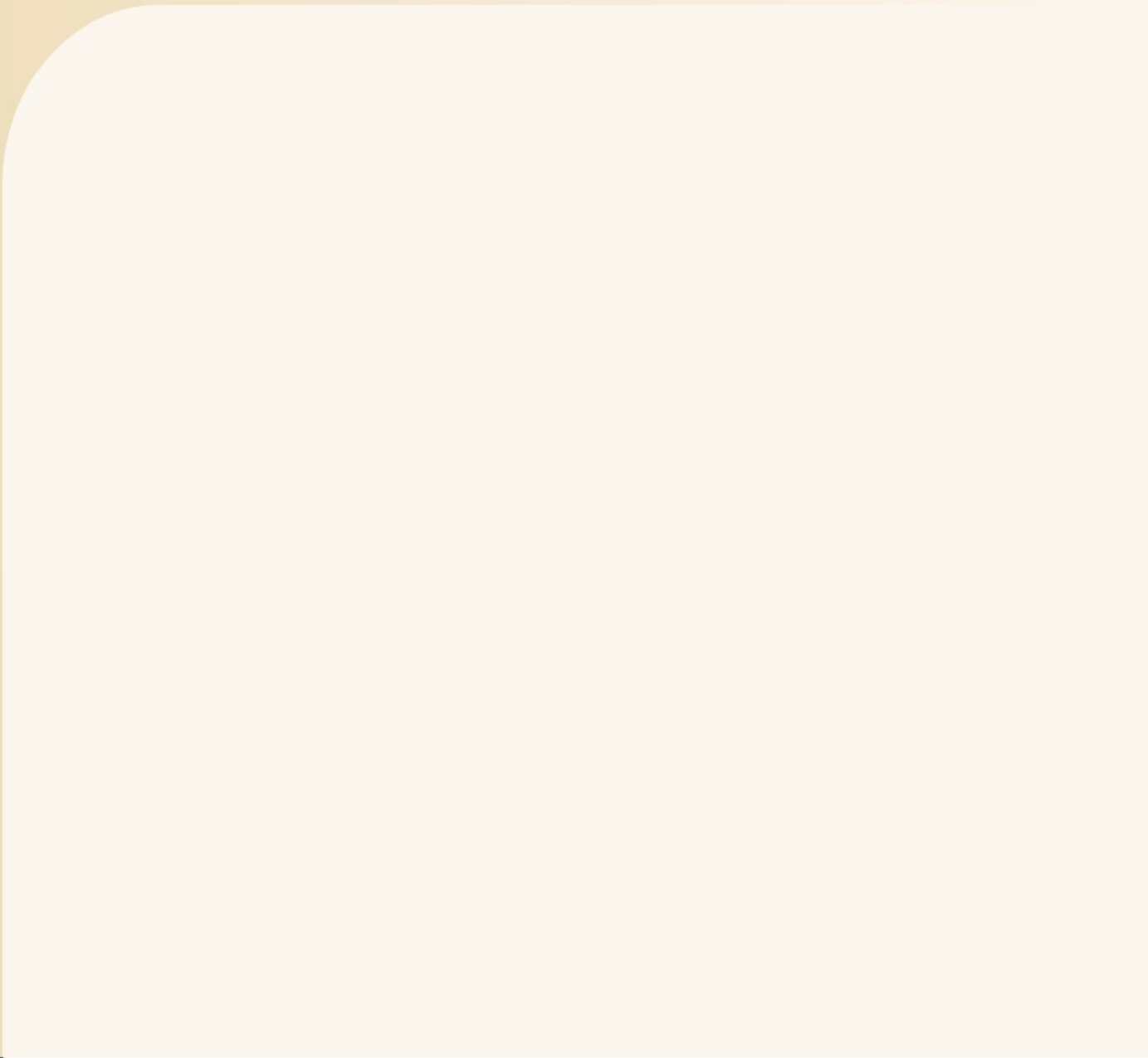
“unregulated business” means carrying on of:

- (a) any stipulated product activity; or
- (b) any other business as may be prescribed by the Authority,

the carrying on of which is not otherwise regulated or authorised by the Authority under any other written law, or would not be otherwise regulated or authorised by the Authority if carried on in Singapore;

“business representative”, in relation to a person (A) who carries on business in any unregulated business —

- (a) means a person (B), by whatever name called, in the direct employment of, or acting for, or by arrangement with A, who carries out for A the unregulated business (other than work ordinarily performed by accountants, clerks or cashiers), whether or not B is remunerated, and whether B's remuneration, if any, is by way of salary, wages, commission or otherwise; and
- (b) includes, where A is a corporation, any officer of A who performs for A the unregulated business, whether or not the officer is remunerated, and whether the officer's remuneration, if any, is by way of salary, wages, commission or otherwise;



Monetary Authority of Singapore