RESPONSE TO FEEDBACK RECEIVED

February 2023

Introduction of Due Diligence Requirements for Corporate Finance Advisers

Monetary Authority of Singapore

Contents

1 Preface

1.1 On 15 December 2021, MAS issued a consultation paper proposing to impose due diligence requirements on holders of a capital markets services ("CMS") licence, as well as banks, merchant banks and finance companies exempt from holding a CMS licence (collectively referred to as corporate finance advisers or "CF advisers") that undertake the regulated activity of advising on CF.

1.2 The consultation period closed on 15 February 2022, and MAS would like to thank all respondents for their contributions. The list of respondents is in Annex A, and the full submissions are provided in Annex B.

1.3 MAS has considered carefully the feedback received and will incorporate them where it has agreed with the feedback. Comments that are of wider interest, together with MAS' responses are set out below.

2 Introduction of Due Diligence Requirements

2.1 MAS proposed the introduction of due diligence requirements for CF advisers via a new Notice.

2.2 Respondents generally agreed with the importance of raising industry standards on the conduct of due diligence.

2.3 Respondents commented that CF advisers are already subject to requirements in areas similar to those covered in the Notice, such as managing conflicts of interests ("COIs") and prospectus disclosures. Respondents commented that the Notice should not conflict or overlap with existing laws and guidelines, so as not to give rise to uncertainty on the standards that prevail. Respondents specifically highlighted the due diligence guidelines issued by the Association of Banks in Singapore ("ABS DD Guidelines").

2.4 Some respondents suggested that the proposed standards could be set out in other forms such as a code of conduct or guidelines, as this would allow for elaboration on the standards expected of the industry.

2.5 Other respondents sought clarity on whether the Notice will be used as a yardstick to determine if a CF adviser, which is acting as an issue manager ("IM"), has made reasonable inquiries in relation to his prospectus liability under section 253(5)(b) of the Securities and Futures Act 2001 ("SFA").

MAS' Response

2.6 The proposed requirements seek to establish the baseline standard of conduct that MAS expects of all CF advisers, including CF advisers acting as IMs of initial public offerings ("IPOs"). We view this to be important for raising the overall quality of the CF industry, strengthening public confidence and promoting informed decision making by investors through quality disclosures.

2.7 MAS considers there not to be conflicts or overlaps between the requirements in the Notice and other requirements or guidelines. Where relevant, the Notice elaborates on ways in which CF advisers can achieve the regulatory objectives of existing requirements. For example, the requirements in the Notice on managing COI serve to supplement the corresponding requirement[1] in the Securities and Futures (Licensing and Conduct of Business) Regulations by setting out the measures CF advisers should have to mitigate potential COI related to their CF business, and the actions CF advisers should take if they are unable to mitigate such COI. MAS notes that the scope of the ABS DD Guidelines is confined to certain transactions such as IPOs. Further, the ABS DD Guidelines are not legally binding. The issuance of the Notice does not preclude MAS from issuing guidelines in the future (where necessary) to clarify on due diligence expectations.

2.8 The due diligence requirements in the Notice will also guide the determination of whether an IM has made reasonable inquiries as to the need for inclusion of required information and whether there are false or misleading statements in the offer document under section 253(5)(b) of the SFA. This is similar to the approach taken in other major jurisdictions.

2.9 Having considered the feedback received, MAS will proceed with the introduction of the Notice on due diligence requirements for CF advisers.

3 Applicability of Requirements to Different Transactions

3.1 MAS proposed to require CF advisers to comply with the requirements under Part I of the Notice when advising on all CF advisory engagements, and additional requirements under Part II of the Notice when acting as IMs for IPOs.

[1] On ensuring effective controls and segregation of duties to mitigate potential COI under regulation 13(b)(ix) of the Securities and Futures (Licensing and Conduct of Business) Regulations

Reverse Takeovers ("RTOs") and Very Substantial Acquisitions ("VSAs")

3.2 MAS sought views on whether Part II of the Notice should apply to CF advisers when advising on RTOs or VSAs.

3.3 Many respondents supported applying Part II of the Notice to RTOs. The respondents were of the view that RTOs are in effect an alternative path to listing, have similar transaction risks as and should be treated as IPOs. The due diligence processes for both are also similar in practice. Some respondents disagreed with applying Part II of the Notice to RTOs. However, these respondents did not provide substantive feedback on why Part II should be disapplied.

3.4 The majority of respondents disagreed with applying Part II of the Notice to VSAs. Key comments provided include that VSAs do not involve a change in control or new public shareholders, or a change in the board of directors, and may not necessarily result in substantive changes in the existing business of the listed entity. CF advisers advising on VSAs should thus not be subject to the same level of due diligence requirements as IPOs.

MAS' Response

3.5 MAS agrees that RTOs have similar characteristics and risks as IPOs and will apply Part II of the Notice to RTOs. MAS also clarifies that an IM advising on the listing of a Special Purpose Acquisition Company ("SPAC") and/or the subsequent de-SPAC business combination, and an IM advising on a secondary listing on a Specified Approved Exchange (as defined in the Notice) which occurs simultaneously as the IPO of that entity in a foreign market will be subject to Part II of the Notice. This is as such transactions entail either investments from the public into or the raising of funds from the public by private entities or businesses, and bear similar risks to IPOs.

3.6 Considering that VSAs do not involve a change in the shareholders or board of directors of the listed company, MAS will allow for the board of directors of the listed company to determine the appropriate extent of due diligence which should be conducted for VSAs, in exercise of their fiduciary duty to shareholders. The board of the listed company should consider how the VSA will change the business and risk profile of the company. While MAS will not subject CF advisers advising on VSAs to the detailed due diligence requirements applicable to IPOs, such CF advisers will be required to comply with the general conduct requirements in Part I of the Notice, as well as the general due diligence requirement in Part II of the Notice. MAS' approach does not preclude the exchange from imposing a higher standard on IMs when advising on certain segments of the market (e.g. for Catalist firms) where warranted.

Other Transactions

3.7 Some respondents provided feedback on the challenges of applying the Notice or specific requirements in the Notice to certain other transactions. This is due to the varying nature of and extent of due diligence performed for different transactions. The comments received are detailed in the following paragraphs.

3.8 Respondents suggested not to apply the due diligence requirements in paragraph 8 of the draft Notice (i) when CF advisers advise on private placements made to accredited and institutional investors (considering the sophistication of such investors), and mergers and acquisitions ("M&As") of listed companies; or (ii) when CF advisers act as bookrunners, placement agents or underwriters.

3.9 One respondent asked about the applicability of the Notice to the provision of advisory work relating to the issuance of circulars on corporate actions for listed companies or debt restructuring of non-listed companies.

3.10 Some respondents also enquired on the applicability of the Notice to cross-border transactions, specifically (i) the provision of CF advice by a foreign firm to Singapore-based entities; and (ii) IPOs in overseas markets, or transactions with no nexus to Singapore.

MAS' Response

3.11 MAS agrees that non-retail investors are generally more sophisticated and/or better able to withstand losses. CF advisers advising on offers to non-retail investors and transactions not involving any listed companies will thus not be required to comply with the due diligence requirements in paragraph 19 of the issued Notice (corresponding to paragraph 8 of the draft Notice). CF advisers advising on other transactions, including M&As of and corporate actions for listed entities, will continue to be subject to paragraph 19 of the issued Notice.

3.12 For clarity, the Notice will apply to financial institutions in their conduct of CF advisory activities. Financial institutions will not be subject to the Notice when acting as bookrunner, placement agent or underwriter, or involved in other roles, where these do not constitute the carrying on of the regulated activity of advising on CF under the SFA.

3.13 On applicability to cross-border transactions, foreign firms which intend to provide CF advisory to Singapore-based entities should assess whether their activities require them to hold a CMS licence for advising on CF under section 82, read with section

339[2], of the SFA. Where licensing is required, the entities will consequently be required to comply with the Notice upon grant of the CMS licence. As a CMS licence holder, the CF adviser will have to comply with relevant requirements in the Notice when advising on transactions whether in Singapore or overseas. For instance, paragraphs 20 to 35 in the issued Notice are only applicable to specific transactions on a Specified Approved Exchange, as set out in paragraph 3(b) of the issued Notice.

4 Definitions

4.1 We received feedback to align some of the definitions in the Notice with existing definitions in the SFA and its subsidiary legislation, or the listing rules.

MAS' Response

4.2 Where appropriate, we have aligned the definition of terms in the Notice such as "expert" with existing definitions.

5 Requirements for all CF Transactions

Implementing Policies, Procedures and Controls

5.1 A few respondents queried on whether there is a requirement for CF advisers to implement policies, procedures and controls on all areas in the Notice (e.g. Part II of the Notice), where the CF adviser does not intend to undertake such transactions. Another respondent raised difficulty in implementing policies and procedures as the roles played by CF advisers are unique to each situation and customer.

MAS' Response

5.2 MAS will maintain the baseline requirement for CF advisers to put in place the necessary arrangements to ensure compliance with the issued Notice. This is no different from what we expect of financial institutions in respect of other regulatory requirements.

5.3 CF advisers should develop and implement policies, procedures and controls commensurate with the scope and scale of their businesses. For example, CF advisers that do not advise on IPOs or RTOs will not be required to implement policies, procedures and controls pertaining to the requirements expected for the conduct of advising on IPOs in

[2] With guidance on the scope and application of section 339 of the SFA provided in the Guidelines on the Application of Section 339 (Extra-Territoriality) of the SFA (SFA 15-G01)

Part II of the issued Notice. The policies, procedures and controls should cater for the different roles taken on by the CF adviser and provide guidance to staff on how different situations should be handled in ensuring compliance with the relevant requirements in the issued Notice.

Acting with Due Care, Skill and Diligence

5.4 Respondents supported the requirement for CF advisers to act with due care, skill and diligence.

5.5 A few respondents proposed providing CF advisers the flexibility to determine whether they can rely on representations or other information provided by customers without performing verification or by performing limited verification.

5.6 Some respondents also opined that reliance on the work performed by experts or other third parties should suffice, for example through verifying against information in expert reports or the results of due diligence performed by third party service providers.

MAS' Response

5.7 Except for transactions to which this requirement does not apply[3], CF advisers are to verify material information provided by customers to ensure that they are accurate and complete. In doing so, CF advisers should exercise reasonable judgment in determining the appropriateness of the verification conducted, including where verification is against the results of work performed by experts or other third parties. CF advisers should also exercise judgment in satisfying themselves that such expert or other third party can be reasonably relied upon.

Managing COI

5.8 Respondents requested to exclude the need for identification, mitigation and disclosure of material COIs between the CF adviser's customers and certain parties – namely, the CF adviser's (i) related corporations or controlling shareholders; and (ii) directors, employees or representatives who are not involved in advising on the specific CF transaction involving that customer. For the former, respondents cited a lack of access to information on some of their related corporations or controlling shareholders.

[3] Refer to paragraph 3 of the issued Notice

Regarding the latter, respondents raised the possibility of leakage of confidential information in the course of conducting COI checks on these persons.

5.9 Respondents also highlighted difficulties in determining what would be considered perceived material COIs, given the subjectivity of perceptions. Some expressed concern with the requirement to disclose material COIs to customers as such disclosures could lead to a breach of client confidentiality or other obligations.

5.10 A few respondents requested for clarity on the types of relationships which CF advisers or their related persons have with customers that would need to be assessed for COIs.

5.11 On the proposal that CF advisers should not accept or continue with an engagement if COIs are not satisfactorily mitigated, respondents suggested that CF advisers be allowed to accept or continue with the engagement by obtaining a waiver of COIs from or providing disclaimers to the customer.

Conduct of other activities

5.12 Some respondents asked that the "other activities" CF advisers may be involved in, which CF advisers are to assess for COI, be prescribed. We also received various feedback on what such activities should cover or be limited to. For example, some respondents stated that controls or mitigants need not be put in place when CF advisers are involved in other activities that they assess to be symbiotic in nature such as the allocation of offers that the CF adviser is advising on.

Physical segregation and information barriers

5.13 Some respondents requested that non-professional employees such as administrative staff who are housed under the CF function not be subject to the requirement on physical segregation. Others asked more broadly for physical segregation not to be mandated – with one respondent elaborating that there are other controls which can prevent the disclosure of confidential or price sensitive information, including having designated work areas for different functions. There were also respondents who suggested that there could be scenarios where the proposed safeguards (i.e. physical segregation, restriction of access to confidential or price sensitive information) against disclosure of information may not be necessary, such as where personnel who perform the allocation of securities are brought into the CF function.

Personal dealing

5.14 A few respondents requested not to apply the personal dealing requirements to certain persons within the CF adviser, namely non-executive directors given that they are not involved in the day-to-day management of the CF adviser, and persons who only rely on publicly available information in their course of work.

5.15 Some respondents opined that CF advisers do not have control over the actions of their directors, employees or representatives to ensure that these persons do not engage in personal dealing under the specified circumstances. Some respondents also commented that the restriction of personal dealing, where such dealing conflicts with the interest of the CF adviser's customer, is overly broad and could be interpreted to restrict persons from dealing for their own account in securities of the customer's competitors.

MAS' Response

5.16 In providing advisory services on fund raising or M&As, intermediaries such as CF advisers may encounter COIs which, if not appropriately mitigated, can compromise the integrity and efficiency of the process. It is important that customers' interests are safeguarded and COIs are properly mitigated. In this regard, a CF adviser should assess for and mitigate material COIs that may arise between a customer and its related corporations or controlling shareholders, where these related corporations or controlling shareholders provide services to or are engaged in activities involving the same customer. For instance, COIs may arise when related corporations or controlling shareholders provide services such as legal, compliance, audit or assurance to the same customer or subscribe to an offer that the CF adviser is advising the customer on. CF advisers should have an understanding of the background of all directors, employees or representatives involved in the supervision or provision of CF activities to avoid putting such persons in positions of COI. A more detailed COI assessment should also be conducted on the transaction team prior to their involvement in a specific CF transaction.

5.17 Taking into account the feedback received, we will remove the requirement for CF advisers to identify and mitigate perceived COIs. As for the disclosure of material COIs, we are of the view that CF advisers may do so without disclosing the identity of or any non-public or price sensitive information that may impact other customers. We will make adjustments to the issued Notice such that CF advisers need only disclose such COI where appropriate.

5.18 With regard to the scope of relationships that are to be assessed, CF advisers should assess for COI arising from both contractual and non-contractual relationships with a customer. This would include considering COI that could arise from connected persons relationships (i.e. spouse, children, parents and siblings) of the directors, employees and representatives of the CF adviser who are involved in CF advisory activities.

5.19 MAS does not consider disclosures to or waivers from customers to be adequate in mitigating COIs and will retain the requirement for CF advisers not to accept, or continue with the CF advisory engagement where COIs are not mitigated. CF advisers should keep in mind the duty of care to ensure that the interests of its customer, as well as investors, are not adversely affected by COIs surrounding a transaction, and should put in place controls to satisfactorily mitigate such conflicts before accepting or continuing with a CF advisory engagement.

Conduct of other activities

5.20 MAS will not prescribe the activities conducted by CF advisers that would be considered "other activities" for which CF advisers are to assess for COI. As the nature, scope and scale of other activities (i.e. activities other than the provision of CF advice) of CF advisers differ, each CF adviser should perform its own assessment to identify these activities. On the allocation example raised, COI may potentially arise in the making of pricing or allocation decisions such that the interest of one party (e.g. the CF adviser or its other customers) is advanced at the expense of the interest of another (e.g. the customer to whom the CF adviser is providing CF advice). As such, CF advisers should put in place controls to mitigate such potential conflicts, such as maintaining an allocation policy that sets out their approach for determining allocations and ensuring that issuers are provided with key information relevant to allocation and pricing decisions.

Physical segregation and information barriers

5.21 With respect to physical segregation, individuals who are part of the CF function or department and have access to confidential or price sensitive information on CF advisory transactions should have segregated work premises from other personnel. These would include administrative staff, if any, that support the CF transaction team and have access to such information.

5.22 In addition, there could other personnel involved in the transaction e.g. where a corporate banker or an analyst is ‘brought over the wall’ to be part of the transaction team. MAS recognises that it may be difficult to segregate the work premises of such personnel (e.g. the corporate banker could still be serving other borrowers), and hence will not mandate this for such personnel. Nonetheless, there should be controls to ensure that such personnel safeguard the confidential or price sensitive information to prevent unauthorised or accidental leakage or disclosure. Access to confidential or price sensitive information should be on a need-to-know basis and discussions involving confidential or price sensitive information should be held only among individuals who have been granted access to that information.

5.23 Separately, having designated work areas for different functions serve as an effective control in preventing the disclosure of confidential or price sensitive information only where there are access controls for those areas where such information is stored or discussed.

Personal dealing

5.24 MAS would like to clarify that the personal dealing requirements are intended to apply to all persons who carry on the activity of advising on CF or activities connected with advising on corporate finance. This would include persons in the transaction team and those who are involved in the review of work performed for a transaction (e.g. relevant directors.

5.25 Considering the feedback received, we will also refine the requirement such that CF advisers should have policies and procedures to restrict personal dealing in the specified circumstances, including where such personal dealing is in conflict with the provision of CF advice to the customer (as opposed to where such dealing is in conflict with the customer's interest).

Governance and Supervision

5.26 Some respondents requested to remove certain of the proposed matters subject to management oversight in paragraphs 14 and 16 of the draft Notice. This is particularly for transactions other than IPOs and RTOs, given the simplified nature of these transactions.

5.27 There were a few respondents who requested that senior management of CF advisers be able to delegate their duties and responsibilities to other designated persons or committees. One respondent also sought clarity on whether all directors should be deemed as 'senior management' of a CF adviser.

5.28 A few respondents also suggested that CF advisers be able to supplement the experience of the representatives in a transaction team by seeking assistance from other parties such as personnel from other offices or third-party experts. One requested that experience in similar transactions be considered relevant.

MAS' Response

5.29 MAS has considered the feedback received and agrees that there is room to be less prescriptive on matters subject to management oversight when CF advisers advise on non-IPO/RTO transactions. Accordingly, some of the proposed matters subject to management oversight (including reportable matters) will be applicable to CF advisers

only when advising on IPOs and RTOs. We will retain baseline governance requirements for CF advisers over the acceptance of new engagements and appointment of the relevant transaction teams, as well as for the escalation of material issues, when advising on all CF transactions.

5.30 Senior management may delegate their duties and responsibilities, where such delegation is reasonable, to persons with the necessary capacity, competence, knowledge, skill and authority. Senior management, as defined for the purpose of the issued Notice, would be persons who are principally responsible for the day-to-day management of the corporate finance business. Depending on the set up of each CF adviser, such persons may or may not hold the position of a director of the CF adviser. For the avoidance of doubt, the duties and responsibilities of the directors and CEO of a financial institution remain unchanged, i.e. they should exercise adequate oversight over the financial institution (including instituting an appropriate monitoring and reporting mechanism), regardless of whether they are considered as senior management for the purpose of the issued Notice.

5.31 The representatives on a transaction team should collectively possess the appropriate experience to advise on the transaction. In considering whether the team possesses the appropriate experience, CF advisers may have regard to whether its representatives have handled similar types of CF advisory transactions. CF advisers are however not precluded from engaging other persons to supplement the experience of the team in specialised or niche areas. When doing so, CF advisers should ensure compliance with the requirements in the issued Notice on reliance on the work of third parties.

Keeping Records

5.32 A few respondents highlighted challenges in keeping records of verbal discussions, with one enquiring about the expectations when CF advisers seek the assistance of other parties (such as legal advisers) to do so.

MAS' Response

5.33 While CF advisers need not keep verbatim records of discussions, proper documentation of discussions should be retained, particularly on material issues discussed and decisions made.

5.34 When relying on third parties to document discussions, CF advisers remain responsible for ensuring that the records accurately reflect the discussions and complying with the record keeping requirements under the Notice. CF advisers should have the ability to provide MAS with timely access to the records when requested.

6 Additional Requirements for Advising on IPOs and RTOs

Advising the Listing Applicant on Regulatory Requirements

6.1 Some respondents suggested that it would be more appropriate for the legal advisers of a listing applicant to advise it on its duties and responsibilities under the relevant rules and regulations, as CF advisers may not possess the legal expertise to do so.

6.2 Some respondents also commented that it would be too broad to include "other relevant regulatory requirements", as this could include requirements beyond the scope of the CF advisory transaction, such as those relating to the listing applicant's industry and business.

MAS' Response

6.3 MAS will refine the requirements accordingly, taking into account the feedback received. While third parties such as legal advisers may brief listing applicants on their duties and responsibilities, the CF adviser remains responsible for ensuring that listing applicants are informed of their duties and responsibilities under the relevant rules and regulations.

6.4 The scope of regulatory requirements in this section will be amended to those under the SFA, as well as the listing rules that are relevant to the application for listing and to the listing applicant's continuing obligations after listing.

Understanding the Listing Applicant and Performing Appropriate Verification

6.5 A few respondents requested not to mandate the minimum due diligence procedures set out in paragraph 23 of the draft Notice, as the circumstances of each transaction should be taken into account in assessing whether the performance of these procedures is appropriate. They commented that there could be challenges in complying with some of the requirements under certain circumstances, such as to inspect key physical assets where pandemic travel restrictions are imposed, or where major business customers decline to be interviewed. Respondents also inquired if site visits may be conducted by a CF adviser's affiliate or legal counsel.

6.6 Feedback was also received on some of the specific minimum due diligence procedures. A few respondents viewed that it would be too onerous to require the background checks to be conducted on all related corporations of a listing applicant, in particular the listing applicant's sister companies. One respondent commented that it would not be practicable to mandate the verification of material representations with

only relevant persons of appropriate authority and with appropriate knowledge of the listing applicant. Such verifications can also be performed through other means, including independent background checks. The same respondent queried what the "material issues" for which CF advisers are to review the relevant underlying and supporting documents and obtain additional third-party information or appoint third parties to check on, where appropriate, refer to.

6.7 Some respondents highlighted difficulties in having persons independent of the transaction team with the appropriate seniority, knowledge, skills and experience review the due diligence performed for a listing application. One respondent commented that material issues would typically already be escalated internally.

Engagement of third-party service provider

6.8 There were concerns raised over CF advisers being responsible for the work performed by third-party service providers, as CF advisers are not able to control the work performed by these third parties.

6.9 Respondents also highlighted that this may be inconsistent with section 255(3) of the SFA under which CF advisers may place reasonable reliance on information provided by third parties.

MAS' Response

6.10 MAS recognises that there could be extenuating circumstances which prevent CF advisers from carrying out certain required due diligence procedures in the Notice. Such circumstances could include when there are pandemic travel restrictions or significant physical safety concerns associated with a specific location. We will hence introduce a new provision (i.e. paragraph 24 of the issued Notice) to allow CF advisers, in such situations, to take mitigating measures to address the associated risk of not performing a particular procedure. CF advisers' senior management will be required to review and approve the mitigating measures taken. CF advisers are also not precluded from engaging third parties to support their due diligence work, such as conducting site visits. When doing so, CF advisers would need to comply with the requirements in the issued Notice on reliance on the work of third parties.

6.11 MAS will require CF advisers to only conduct background checks on entities within the listing applicant's group (i.e. its branches and subsidiaries, and other entities that the listing applicant exercises control over) and not its sister companies. We will also allow CF advisers to verify material representations from the customer against other credible sources. Such sources may include government, court or credit bureau records.

Further, we will provide greater flexibility such that the relevant persons whom CF advisers can verify material representations with need possess either the appropriate authority or the appropriate knowledge of the listing applicant.

6.12 CF advisers should make their own assessment of what would be considered a "material issue" which would require additional review and/or third-party checks. This would be dependent on the circumstances of each transaction and could include, for example, litigations involving the listing applicant or negative cash flow which materially impacts the listing applicant's business or financial resources.

6.13 Considering the feedback received on having an independent person review the work of the transaction team, MAS has amended the Notice to clarify that the resolution of material issues arising from a listing application should be reviewed and approved by the CF adviser's senior management.

Engagement of third-party service provider

6.14 CF advisers should not abrogate responsibility for and should exercise professional scepticism in ensuring that reasonable due diligence is performed when third party service providers are engaged to perform specific due diligence work, including those required in the Notice. MAS, however, agrees that CF advisers should not be held responsible for the work performed by the third party and will instead require that CF advisers satisfy themselves that they may reasonably rely on the due diligence work performed by the third party.

6.15 The procedures that are to be performed when CF advisers rely on the work of a third party (such as assessing the credentials of, and scope, extent and results of work performed by, the third party) serve to guide CF advisers in determining whether they will be able to place reasonable reliance on the third party.

Relying on Experts

6.16 One respondent suggested removing the requirement for CF advisers to propose additional services or due diligence where necessary, when reviewing and advising the customer on the scope of services proposed by the expert.

6.17 A respondent requested for clarity on whether the requirement to review an expert's report critically and compare the information in them against other known information will necessitate CF advisers auditing or verifying the work undertaken by the expert. Another respondent suggested that such review be performed to the extent a non-expert can reasonably do.

6.18 In respect of the proposed requirement to assess whether material bases, assumptions and qualifications in the expert's report are fair, reasonable and complete, one respondent asked that such assessment may be undertaken by CF advisers based on their review of information in the expert's report and information already known to CF advisers through their due diligence.

MAS' Response

6.19 MAS will retain the requirement for CF advisers to propose additional services or due diligence where necessary. This is given that CF advisers, in their role as IMs, are well placed to determine whether there are any gaps in the scope of work to be performed by the expert.

6.20 CF advisers are not expected to audit the work of the expert when reviewing its report. However, should there be material discrepancies between the information in the expert's report and other information that is known to CF advisers, they should investigate further and address these discrepancies. MAS will amend the Notice to clarify that CF advisers should review an expert's report to the extent a non-expert can make such an assessment, and against information that are known to them.

Admission of the Listing Applicant

6.21 Respondents opined that the proposed requirement for CF advisers to be satisfied with the outcome of due diligence performed prior to the submission of the listing application and the listing applicant's admission to the Specified Approved Exchange could be interpreted to require the resolution of all issues identified through the conduct of due diligence prior to listing. They were of the view that this would not be practicable.

6.22 Respondents also provided feedback that some directors of listing applicants could be first-time directors (e.g. the business founder) and do not possess experience as a director of a listed company. One respondent also commented that a lack of relevant qualifications may not impair a director's ability to discharge his duties under the listing rules.

MAS' Response

6.23 MAS will amend the requirement to clarify that CF advisers should be satisfied that material issues are satisfactorily resolved or are clearly disclosed prior to submission of the listing application and the listing applicant's admission to the Specified Approved Exchange.

6.24 We recognise that directors can attain the necessary competencies to discharge their obligations through other means such as by attending training courses and will refine the requirement in the Notice accordingly. We will retain the requirement that the board should collectively possess the experience and qualifications to manage the listing applicant's business and ensure compliance with the relevant requirements.

7 Materiality Considerations

7.1 MAS sought views on the proposal to introduce materiality qualifiers for certain requirements in the Notice, and the considerations for assessing materiality.

7.2 Some respondents proposed the inclusion of materiality qualifiers for other requirements in the Notice.

7.3 There were a few respondents who suggested some considerations for assessing materiality for some requirements. The majority of respondents felt that it would not be appropriate to specify materiality considerations, as what would be considered material differs from transaction to transaction. Respondents added that specifying materiality considerations could lead to CF advisers adopting a "checklist" mindset and treating these considerations as exhaustive. There were also some respondents who commented that the absence of materiality considerations could result in CF advisers performing excessive due diligence work, notwithstanding the presence of materiality qualifiers.

MAS' Response

7.4 MAS recognises that the appropriate nature and extent of due diligence work to be performed varies between transactions. In the course of their work, CF advisers are best placed to continue to use their professional judgment in determining what they would consider as material for each transaction. Accordingly, MAS will not be prescribing materiality considerations.

7.5 Where appropriate, we have incorporated materiality qualifiers into other requirements in the Notice as suggested by respondents. For instance, CF advisers will be required to independently investigate allegations or complaints which have a material bearing on the accuracy or adequacy of information provided or the applicant's suitability for listing, as opposed to all allegations or complaints.

8 Transitional Period

8.1 A few respondents requested that sufficient time be provided to implement changes in internal processes to comply with the Notice.

MAS' Response

8.2 MAS will provide a transitional period from the publication date of this response paper for CF advisers to enhance their policies and procedures and implement the necessary changes. The issued Notice will take effect from 1 October 2023 and apply to all CF advisory engagements entered into on or after that date.

8.3 Nonetheless, we encourage CF advisers to start applying the requirements in the interim, particularly when advising on IPOs and RTOs.

MONETARY AUTHORITY OF SINGAPORE

23 February 2023

Annex A

LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON INTRODUCTION OF DUE DILIGENCE REQUIREMENTS FOR CORPORATE FINANCE ADVISERS

1. Allen & Gledhill LLP (representing 20 corporate finance advisers[4]), which requested for confidentiality of submission
2. Allen & Overy LLP, which requested for confidentiality of submission
3. Campbell Lutyens (Singapore) Pte Ltd
4. DBS Bank Ltd., which requested for confidentiality of submission
5. International Capital Market Association
6. Mizuho Bank, Ltd.
7. PrimePartners Corporate Finance Pte Ltd, which requested for confidentiality of submission
8. WongPartnership LLP, which requested for confidentiality of submission

Seven respondents requested for confidentiality of identity and submission.

Please refer to Annex B for the submissions.

[4] The corporate finance advisers included – (i) Barclays Bank PLC, Singapore Branch; (ii) Cantor Fitzgerald Singapore Pte. Ltd.; (iii) DBS Bank Ltd.; (iv) Deutsche Bank AG, Singapore Branch; (v) J.P. Morgan (S.E.A.) Limited; (vi) Merrill Lynch (Singapore) Pte. Ltd.; (vii) Oversea-Chinese Banking Corporation Limited; (viii) Standard Chartered Bank (Singapore) Limited; (ix) UBS AG, Singapore Branch; (x) United Overseas Bank Limited; and (xi) UOB Kay Hian Private Limited.

Annex B

SUBMISSION FROM RESPONDENTS TO THE CONSULTATION PAPER ON INTRODUCTION OF DUE DILIGENCE REQUIREMENTS FOR CORPORATE FINANCE ADVISERS

S/N	Respondent	Responses from Respondent
1	Campbell Lutyens (Singapore) Pte Ltd	**Question 1. MAS seeks comments on the proposed requirements in the Notice as set out in Annex A. Where you disagree with any of the proposed requirements, please explain why and provide alternative options.** Introduction The draft notice on due diligence requirements for corporate finance advisers (Notice) is applicable to holders of a capital markets services licence to advise on corporate finance and persons exempt from holding a capital markets services licence under section 99(1)(a), (b) or (c) of the Securities and Futures Act (SFA) to advise on corporate finance. However, the definition of advising on corporate finance in the SFA is broad and different corporate finance advisers can engage in different types of corporate finance activity, and might not be required to conduct any due diligence work in relation to its corporate finance activity. We suggest the MAS to have a more specific definition for the types of corporate finance advisers that are required to comply with the Notice. **Question 2. MAS seeks views on whether Part II of the Notice should be applied to CF advisers when advising on RTOs or VSAs. Where you agree or disagree, please explain why, and where you disagree, please provide alternative options.** Should Part II of the Notice be applied to CF advisers when advising on RTOs? (Please check the relevant box.) No. Please provide your justification for agreeing or disagreeing to apply Part II of the Notice to CF advisers when advising on RTOs. If you disagree, please provide alternative options. N/A. Should Part II of the Notice be applied to CF advisers when advising on VSAs? (Please check the relevant box.) No. Please provide your justification for agreeing or disagreeing to apply Part II of the Notice to CF advisers when advising on VSAs. If you disagree, please provide alternative options. N/A.

		Question 3. MAS seeks views on the considerations to be taken into account when assessing materiality of the following requirements. In your response, please state which specific requirement you are providing feedback on and the materiality considerations or examples for the requirement. N/A.
2	International Capital Market Association ("ICMA")	ICMA is responding to the MAS consultation Introduction of Due Diligence Requirements for Corporate Finance Advisers from the international syndicated bond issuance perspective (focusing only on Part I of the proposed MAS Notice, since Part II explicitly relates to IPOs, reverse takeovers and very substantial acquisitions rather than debt transactions). **Question 1. MAS seeks comments on the proposed requirements in the Notice as set out in Annex A. Where you disagree with any of the proposed requirements, please explain why and provide alternative options.** 1. International consistency – International syndicated bond issues[5] typically involve a borrower hiring a syndicate of banks (that tend to be from various jurisdictions) to underwrite and manage the transaction internationally. The banks commonly operate across several jurisdictions to facilitate their borrower clients' access to funding in the global capital markets. In this respect the individual banks and transaction must comply with applicable regulation in more than one jurisdiction, and often several. Thus far, banks have adopted fairly consistent practices although it is not subject to prescriptive requirement of any particular jurisdiction. Materially onerous inconsistencies in individual jurisdictions (such as Singapore) may hamper local issuer, underwriter and investor participation in cross-border financings (see further #2). Incidentally in this respect, ICMA would respectfully submit that any local regulatory changes consequent to IOSCO's

[5] International syndicated bonds issues are normally issued based on Reg S or Reg S /Rule 144A format of the US. In the context of Singapore, they will be distributed to institutional, accredited and/or other specified investors without any prospectus via safe harbour provided by s.274 and s.275 of the Securities & Futures Act 2001.

		work on conflicts of interest and associated conduct risks during the debt capital raising process should be delivered in a globally consistent manner. 2. Singapore consequently at competitive disadvantage – The Part I proposals potentially put Singapore-licensed banks (and individual bankers) at a competitive disadvantage, as they will be subject to requirements more onerous than either market norms or standards imposed by any other Asia-Pacific jurisdiction. These provisions could potentially also have an adverse impact on market access for Singapore investors (and attractiveness of SGX as a foreign debt listing venue). The adverse impact could be especially pronounced in transactions that have a limited Singapore nexus but are still technically subject to the requirements (due to even just one Singapore-licensed banker being involved). For example, there could be transactions run outside of Singapore by affiliated bank entities in Hong Kong or Europe for a Singapore borrower looking to list foreign debt outside of Singapore, but a Singapore-licensed banker remains involved due to having general relationship responsibility for the borrower client. 3. Application to international transactions – ICMA is of the view that the Part I proposals are too granular and prescriptive, and that such level of detail is not consistent with established regulation and best practice for due diligence conducted in cross-border syndicated bond issues. (A) Due diligence not prescriptive in form – The Part I proposals are notably too granular and prescriptive regarding: (i) the requirement for "senior management" to have oversight over prescribed matters; (ii) the requirement to have a due diligence plan for each specific transaction and for "senior management" to have oversight over any material departures from such due diligence plan; and (iii) the requirement that corporate finance advisers must conduct the appropriate verification of information and in prescribing in detail record keeping requirements.

		(B) Due diligence not prescriptive in substance – Furthermore, due diligence has been a long-standing practice in the context public offerings of both debt and equity securities where parties face civil liability for material misstatements and omissions made in the context of the offering disclosure. The appropriate level of bond underwriter duties in relation to issuer disclosure has been the subject of decades' worth of statute and case-law. Issuers are the ones primarily responsible for making proper disclosure in relation to their bond issues. Underwriters however may well find themselves being pursued whenever an issuer becomes insolvent and are acutely conscious of the dynamics surrounding due diligence defences in such cases. In this respect, due diligence is impacted by the varying facts and circumstances of each case (including, inter alia, the nature and timing of an offering, respective roles of underwriters, whether the offeror is a new equity issuer seeking an IPO or an existing listed issuer and whether the securities being offered are equity or debt). (C) ICMA guidance – The ICMA Primary Market Handbook has included ICMA Recommendation 3.3 and related item 3.4 since January 2000 that provide guidance to market participants on the nature and extent of due diligence for bond offerings. These are set out below. *<< Due diligence R3.3* *The appropriate level of due diligence to be performed in the context of each issue should be considered carefully.* *3.4 It is impossible to prescribe whether or what due diligence procedures would be appropriate in the circumstances of each issue, and procedures will vary greatly from issue to issue (depending, for example, on the type of securities being issued, the rights attached to those securities and the nature of the issuer and its business). >>* 4. Differences between debt and equity – Investor focus is more on an issuer's profitability and growth prospects for an equity offering, while for debt offerings investors look to the specific bond terms and the issuer's solvency and

		creditworthiness. Moreover, bonds are normally distributed in Reg S or Reg S / 144A format, including (in the context of Singapore) to institutional, accredited and/or other specified investors based in Singapore via s.274 and s.275 of the Securities and Futures Act 2001. In addition, bond offerings are often conducted under shorter timelines than equity offerings, particularly where the issuer is a publicly listed company and/or a frequent issuer. Therefore, the practice of due diligence undertaken by banks has evolved over time, depending on the prevailing facts and circumstances of the case to meet their duties and legal liabilities. In this respect, the notably concerning aspects of the Part I proposals (highlighted in #4(A) above) are inconsistent with established market practice for debt offerings. 5. Debt transactions, particularly wholesale/ prospectus-exempt bond offerings, can be executed in various forms – A large proportion of bond offerings in the OTC market are offered to wholesale investors pursuant to prospectus exemptions and as such, there are no regulated disclosure requirements and no fixed market practice on due diligence conducted for such transactions. The process for such transactions can differ widely and, whilst some such transactions may be based on formal disclosure documentation under a borrower's issuance programme, it is not uncommon for other such transactions to be sold privately on the basis of no disclosure document, i.e. on an undocumented basis, with 'big boy letters' provided by investors and launched and executed over very compressed timelines (e.g. overnight placements). In addition, the roles of the financial institutions / banks as managers in an offering can also differ widely, from lead managers that are involved from the start to completion of the transaction to passive / lower-tier managers who join the transaction at a late stage and who are not actively involved in the marketing and distribution of the offering. The Part I proposals in the Notice, which contain prescriptive requirements for due diligence as set out in #4(A) above, make no differentiation of the various forms that OTC / wholesale bonds can be executed and the various roles that the corporate finance adviser may undertake in the transaction. This will result in significant challenges and lack

		of clarity on how the prescriptive requirements are to apply across the board on all transactions. 6. Restriction on dealings – The Part I proposals may be inconsistent with other local domestic regulatory requirements and practice/policy. Beyond the notably concerning aspects (highlighted above), an example regarding conflicts management is the proposal to restrict directors/employees/representatives of a bank from dealing in capital markets products for their own account where such dealing is "in conflict with the interests of the corporate finance advisor's customer", which is broad and ambiguous. It is further noted that many banks already have in place established policies for trading in securities by employees.
3	Mizuho Bank, Ltd.	**Question 1. MAS seeks comments on the proposed requirements in the Notice as set out in Annex A. Where you disagree with any of the proposed requirements, please explain why and provide alternative options.** <u>Introduction</u> i. The current CMFAS Module 4A which MAS Representative has to take in order to be registered as a Corporate Finance Advisor does not include expectations of the draft Notice such as the extent of due diligence and appropriate verification of information. Will the Authority consider to collaborate with IBF to expand the syllabus and expect the current Corporate Finance Advisors to attend it as a refresher course before effective date of the Notice? Otherwise, will IBF be coming up with separate refresher course on this for existing corporate finance advisors? ii. In paragraph 3.2 of the Consultation Paper, it is mentioned that Para 8(b) to (d) of the draft Notice is not intended to be applied to a corporate finance adviser who advises on private mergers and acquisitions. We would like to confirm with the Authority if private mergers & acquisition refers to mergers & acquisition of non-listed target company since due diligence is performed on target companies only If this understanding on private mergers & acquisitions is not correct, then could the Authority provide some illustrations of private mergers & acquisitions? <u>Part I: Acting with Due Care, Skill and Diligence</u> i. On paragraphs 8 and 14 of the proposed Notice, if the scope of corporate finance work is limited to deal origination and

		does not involve execution stage where execution stages (including due diligence and signing of mandate) is done by Head Office outside Singapore, may we check whether paragraphs 8 and 14 are still applicable to such deal origination in Singapore? If so, what is the scope as due diligence and execution work and mandate signing is not done in Singapore? ii. Will the understanding be correct that similar obligations outlined in paragraphs 8 and 14 should be applicable to the entity outside Singapore in accordance with its own local rules instead and thus not applicable to the bank in Singapore doing deal origination only? iii. Additionally on paragraph 8 of the proposed Notice, if the due diligence work is done by the appointed technical experts by the acquiring company, the corporate finance advisers of the Bank only perform review on the report by the expert professionals, may we check whether paragraph 8 is still applicable to the Bank, and if so, to what extent? iv. If the mergers & acquisition mandate is signed by Head Office but Singapore branch is supporting in terms of financial advisory for corporate finance (i.e. only performs review on the report by the expert professionals,), may we clarify if the party that is subjected to paragraph 8 is Head Office which signed the execution mandate and oversees the entire transaction and not the financial adviser? If financial adviser is subjected to paragraph 8 in this example, may we clarify to what extent since due diligence scope of work is typically done by appointed technical expert and/or Head Office? <u>Part I: Governance and Supervision</u> i. For paragraphs 14 to 17 of the draft Notice, we would like to confirm with MAS that the expectation is for governance framework to be set at the beginning of each corporate finance advisory work and in terms of senior management oversight, can the definition be in line with the Individual Accountability and Conduct ("IAC") framework, which is established by each individual FI in accordance to the MAS Guidelines on Individual Accountability and Conduct ("IAC Guidelines")? ii. For paragraph 15 of the proposed Notice, as advising on corporate finance is one of the regulated activities under Securities and Futures Act ("SFA"), and misconduct reporting and investigation process is required under Reporting of

		Misconduct of Representatives by Holders of Capital Markets Services Licence and Exempt Financial Institutions [Notice SFA 04-N11], is our understanding correct that we can rely on existing requirements under this Notice SFA 04-N11 to meet same requirements for paragraph 15 of the proposed Notice? <u>Part I: Keeping Records</u> i. For Paragraphs 18 to 20 on record keeping requirement, there have been instances where clients requested for deletion of all non-public information after the project has been completed and closed. May we seek the Authority's concurrence that such record retention requirements of at least 5 years does not extend such records where clients have requested for destruction. ii. On paragraph 19(e), we seek Authority's understanding and concurrence that for cases of discussion conducted verbally which is not documented in writing, the record keeping requirements is not applicable. **Question 2. MAS seeks views on whether Part II of the Notice should be applied to CF advisers when advising on RTOs or VSAs. Where you agree or disagree, please explain why, and where you disagree, please provide alternative options.** <u>Should Part II of the Notice be applied to CF advisers when advising on RTOs? (Please check the relevant box.)</u> No. <u>Please provide your justification for agreeing or disagreeing to apply Part II of the Notice to CF advisers when advising on RTOs. If you disagree, please provide alternative options.</u> We do not have any comments. <u>Should Part II of the Notice be applied to CF advisers when advising on VSAs? (Please check the relevant box.)</u> No. <u>Please provide your justification for agreeing or disagreeing to apply Part II of the Notice to CF advisers when advising on VSAs. If you disagree, please provide alternative options.</u> We do not have any comments. **Question 3. MAS seeks views on the considerations to be taken into account when assessing materiality of the following requirements. In your response, please state which specific requirement you are providing feedback on and the materiality considerations or examples for the requirement.**

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Monetary Authority of Singapore