

CONSULTATION PAPER

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Consultation Paper on Amendments to Corporate Governance Regulations

MAS

Monetary Authority of Singapore

PREFACE

This consultation paper sets out the proposed Securities and Futures (Corporate Governance of Approved Exchanges, Approved Clearing Houses, Licensed Trade Repositories and Approved Holding Companies) Regulations 2013.

2 MAS invites interested parties to forward their views and comments on the issues outlined in this consultation paper. Written comments should be submitted to:

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3 MAS requests that all comments and feedback be submitted by 21 October 2013. Please note that all submissions received may be made public unless confidentiality is specifically requested for.

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1 INTRODUCTION

1.1 The Securities and Futures (Corporate Governance of Approved Exchanges, Designated Clearing Houses and Approved Holding Companies) Regulations 2005 [the “CG Regulations”] were introduced in 2005 and are applicable to approved exchanges, approved clearing houses and approved holding companies regulated under the Securities and Futures Act (Cap. 289) [the “SFA”].

1.2 MAS proposes amendments to the CG Regulations, taking into consideration developments in corporate governance requirements, as well as recent amendments to the SFA.

1.3 MAS has consulted on and implemented changes to the corporate governance requirements for banks, insurers and financial holding companies¹. Where appropriate, we have aligned the requirements in the CG Regulations with the requirements on these entities.

1.4 This consultation paper sets out our proposed changes based on the above developments. Broadly, our proposals cover the following:

- (i) Director independence
- (ii) Board and board committees
- (iii) Appointment of key management officers.

1.5 MAS also proposes to extend the CG Regulations to licensed trade repositories (“LTRs”) in view of their status as systemically important financial market infrastructure. Trade repositories were brought under the SFA as part of legislative changes to improve the regulation and supervision of over-the-counter (“OTC”) derivatives markets in Singapore.

¹ The consultation papers are: Consultation paper on Corporate Governance Regulations and Guidelines (18 March 2010), Consultation paper on Corporate Governance for Insurers (22 February 2012), Consultation Paper on Legislative Changes Relating to Requirements on Key Executive Persons and Directors for Insurers (8 August 2012), and Consultation Paper on Draft Corporate Governance Regulations and Guidelines for Insurers (4 January 2013).

1.6 The proposed Securities and Futures (Corporate Governance of Approved Exchanges, Approved Clearing Houses, Licensed Trade Repositories and Approved Holding Companies) Regulations 2013 is at Annex 1, and when issued is intended to replace the current CG Regulations. Compliance by approved exchanges, approved clearing houses, approved holding companies and licensed trade repositories (together referred to as “regulated institutions”) with the CG Regulations will be reviewed by MAS as part of our ongoing supervisory programme.

2 DIRECTOR INDEPENDENCE

2.1 An independent director is currently defined in the CG Regulations as one who is independent from management and business relationships, and independent from substantial shareholder. Increasingly, across various jurisdictions, the length of service of a director on the board is being included as a factor which may affect a director’s independence. This stems from the concern that a director may develop entrenched interests after a long period of service, and his independence may be compromised as a result.

2.2 We propose to introduce a new requirement for a director to be deemed non-independent after he/she has served a continuous period of nine years on the board. Notwithstanding the proposed nine-year threshold, the Nominating Committee (“NC”) should assess annually prior to the ninth year, whether the length of service of a director has affected his/her independence. A director who has served more than nine years can still remain on the board, as a non-independent director, as long as composition requirements of the board are met.

2.3 For alignment with the corporate governance requirements on banks, insurers and financial holding companies, we have proposed amendments to remove the presumption of non-independence from substantial shareholder for a director of a regulated institution who is connected to the approved holding company of the regulated institution, if the regulated institution is the sole subsidiary of an approved holding company which does not carry on any business other than the holding of the regulated institution. This is subject to the director not being a substantial shareholder of the regulated institution or the approved holding company, as the case may be, and not being connected to a substantial shareholder of the regulated institution (other than the approved holding company) or a substantial shareholder of the approved holding company.

Proposal 1: To introduce a new requirement for a director to be deemed non-independent after he/she has served a continuous period of nine years on the board.

Proposal 2: To remove the presumption of non-independence from substantial shareholder in the case of a director who is connected to the approved holding company of the regulated institution if the regulated institution is the sole subsidiary of the approved holding company which does not carry on any business other than the holding of the regulated institution, subject to certain other conditions.

3 BOARD AND BOARD COMMITTEES

3.1 COMPOSITION OF THE BOARD AND BOARD COMMITTEES

3.1.1 In line with the recommendations in the corporate governance requirements on banks, insurers and financial holding companies, MAS proposes to (i) require that the board of directors comprise at least one-third of directors who are Singapore citizens or permanent residents, in the case of a foreign-owned regulated institution, or, in any other case, at least a majority of directors who are Singapore citizens or permanent residents; (ii) raise the number of independent directors on the board, NC and Remuneration Committee ("RC") from one-third to a majority; and (iii) prohibit the appointment of a person who is a member of the immediate family of the chief executive officer as the chairman of the board.

3.2 REMUNERATION COMMITTEE

3.2.1 Similarly, in line with the corporate governance requirements on banks, insurers and financial holding companies, and taking guidance from the Financial Stability Forum's Principles for Sound Compensation Practices and the Financial Stability Board's Implementation Standards², we have proposed to incorporate the compensation principles into the CG Regulations. The RC shall be responsible for (i) recommending a remuneration framework for directors; (ii) recommending a remuneration framework for executive directors taking into account specific elements and factors; (iii) recommending the remuneration of each director and executive officer based on the frameworks; and (iv) reviewing, at least once in each year, the remuneration practices to ensure that they are aligned with the recommendations made.

3.3 RISK MANAGEMENT COMMITTEE

3.3.1 As a supervisory practice, key financial market infrastructures have been subjected to the requirement to have a Risk Management Committee. We propose to formalise this requirement in the CG Regulations, and to align the composition requirements with the corporate governance requirements on banks, insurers and financial holding companies. The Risk Management Committee should comprise (i) at least three members of the board of directors of the regulated institution; and (ii) at least a majority of directors (including the chairman of the Risk Management Committee) who are non-executive directors.

Proposal 3: To (i) require that the board of directors comprise at least one-third of directors who are Singapore citizens or permanent residents, in the case of a foreign-owned regulated institution, or, in any other case, at least a majority of directors who are Singapore citizens or permanent residents; (ii) raise the number of independent directors on the board, NC and RC from one-third to a majority; and (iii) prohibit the appointment of a person who is a member of the immediate family of the chief executive officer as the chairman of the board.

Proposal 4: To introduce responsibilities for the RC in line with best practices for compensation.

² Issued in April 2009 and September 2009 respectively.

Proposal 5: To formalise the requirement to have a Risk Management Committee comprising (i) at least three members of the board of directors; and (ii) a majority of directors (including the chairman of the Risk Management Committee) who are non-executive directors.

4 APPOINTMENT OF KEY MANAGEMENT OFFICERS

4.1 The SFA provides for MAS to require a financial market infrastructure to obtain MAS' prior approval for the appointment of key persons. MAS deems key persons to be the deputy chief executive officer, chief financial officer, chief risk officer and chief regulatory officer³. We propose to incorporate this requirement in the CG Regulations for greater transparency.

Proposal 6: To incorporate the requirement to seek MAS' prior approval for appointment of key persons in the CG Regulations.

5 CORPORATE GOVERNANCE REQUIREMENTS FOR TRADE REPOSITORIES

5.1 BACKGROUND

5.1.1 As mentioned in paragraph 1.5, trade repositories were brought under the SFA with effect from 1 August 2013. TRs may be regulated as an LTR or a licensed foreign trade repository ("LFTR").

5.1.2 In our February 2012 public consultation⁴, MAS sought views on whether to impose governance standards on trade repositories. Feedback had generally been positive, with views that international standards be

³ Appointment of the chairman, directors and chief executive officer of a regulated institution are already subject to MAS' prior approval under the SFA.

⁴ Consultation Paper on Proposed Regulation of OTC Derivatives (13 February 2012).

followed as much as possible but cautioning that foreign-incorporated trade repositories should not be disincentivised from seeking licensing in Singapore.

5.2 CORPORATE GOVERNANCE REQUIREMENTS FOR LTRs

5.2.1 We propose to extend most of the requirements in the CG Regulations to LTRs. These include requirements on director independence, composition of board and board committees, and on the appointment of key officers.

5.2.2 We are of the view that a trade repository does not perform the role of a frontline regulator for its users, unlike, for example, the relationship between an exchange and its members. While a trade repository is expected to have stringent requirements for the admission of users and acceptance of data, these requirements are envisaged to be operational in nature, e.g. on how data may be submitted to the trade repository. As such, we propose the following differences in corporate governance requirements for LTRs:

(i) *Independence from business relationship*

We propose not to consider a director of an LTR (or any member of his immediate family) who is also a director, substantial shareholder or employee⁵ of a corporation which is (i) a user of; or (ii) a related corporation of a user of the LTR or any of its subsidiaries, as being non-independent from business relationship.

(ii) *Conflicts Committee*

The key responsibility of the Conflicts Committee is to review the adequacy of arrangements within the regulated institution for dealing with any conflicts of interests arising from the regulation and supervision of members, and the commercial interests of the regulated institution. Given that an LTR is not expected to regulate its users in the same way that approved exchanges, approved clearing houses and approved holding companies (where relevant) do, we propose not to require LTRs to have a Conflicts Committee.

⁵ This refers to the situation in which the director is employed by, is receiving or has, at any time during the current or immediately preceding financial year of the LTR, received any compensation from the corporation.

(iii) *Chief Regulatory Officer*

Similarly, given that the key responsibility of a Chief Regulatory Officer is to manage perceived or actual conflicts arising from the regulatory and commercial functions of an entity, we do not envisage the appointment of a Chief Regulatory Officer by LTRs. Accordingly, we do not propose requiring the appointment of a Chief Regulatory Officer for LTRs to be subject to MAS' approval.

5.2.3 Where an approved holding company of an LTR does not carry on any business other than the holding of the LTR, we propose to extend the same proposals in paragraph 5.2.2 to the approved holding company of the LTR.

Proposal 7: To extend the requirements in the CG Regulations to LTRs, with the exceptions as stated in paragraph 5.2.2 above. These include requirements on director independence, composition of board and board committees, and the appointment of key officers.

Proposal 8: To not consider a director of an LTR (or any member of his immediate family) who is also a director, substantial shareholder or employee⁶ of a corporation which is (i) a user of; or (ii) a related corporation of a user of the LTR or any of its subsidiaries, as being non-independent from business relationship. We further propose not requiring LTRs to have a Conflicts Committee and not requiring the appointment of a Chief Regulatory Officer of LTRs, if any, to be subject to MAS' approval.

Proposal 9: Where an approved holding company of an LTR does not carry on any business other than the holding of the LTR, we propose to extend the same proposals in paragraph 5.2.2 to the approved holding company of the LTR.

⁶ This refers to the situation in which the director is employed by, is receiving or has, at any time during the current or immediately preceding financial year of the LTR, received any compensation from the corporation.

5.3 CORPORATE GOVERNANCE REQUIREMENTS FOR LFTRs

5.3.1 We expect LFTRs to have robust governance arrangements, comparable to those of LTRs. However, we recognise that corporate governance standards differ across jurisdictions, having evolved over the years to meet domestic needs and practices.

5.3.2 We note that the Principles for Financial Market Infrastructures (“PFMI”) ⁷ contains governance standards for key financial market infrastructures, including trade repositories. We propose that an LFTR’s compliance with the standards in the PFMI on governance⁸ would provide a reasonable basis for determining that an LFTR is subject to corporate governance requirements comparable to those that an LTR is subject to.

Proposal 10: We propose requiring LFTRs to be subject to corporate governance requirements comparable to the standards in the PFMI on governance.

6 SAVINGS AND TRANSITIONAL PROVISIONS

6.1 For the implementation of the proposed amendments, MAS will provide appropriate savings and transitional provisions in the respective Regulations. In this regard, MAS is considering having the amendments to the CG Regulations take effect no later than from the first Annual General Meeting of each regulated institution held on or after 1 January 2014.

Proposal 11: We would like to seek feedback on having the amendments to the CG Regulations take effect no later than from the first Annual General Meeting of each regulated institution held on or after 1 January 2014.

⁷ The PFMI was issued in April 2012 by the Committee on Payment and Settlement Systems (“CPSS”) and the International Organisation of Securities Commissions (“IOSCO”).

⁸ Principle 2 of the PFMI states that an FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

**DRAFT SECURITIES AND FUTURES
(CORPORATE GOVERNANCE OF APPROVED EXCHANGES,
APPROVED CLEARING HOUSES, LICENSED TRADE
REPOSITORIES AND APPROVED
HOLDING COMPANIES) REGULATIONS 2013**

DISCLAIMER: This version of the amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

No. S 000 –

**SECURITIES AND FUTURES ACT
(CHAPTER 289)
SECURITIES AND FUTURES
(CORPORATE GOVERNANCE OF APPROVED EXCHANGES,
APPROVED CLEARING HOUSES, LICENSED TRADE
REPOSITORIES AND APPROVED
HOLDING COMPANIES) REGULATIONS 2013**

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred by sections 45, 46ZJ, 81Q and 81ZK of the Securities and Futures Act, the Monetary Authority of Singapore hereby makes the following Regulations:

PART I

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Securities and Futures (Corporate Governance of Approved Exchanges, Approved Clearing Houses, Licensed Trade Repositories and Approved Holding Companies) Regulations 2005 and shall come into operation on [Commencement Date].

Definitions

2.—(1) In these Regulations, unless the context otherwise requires —

“associated corporation”, in relation to a corporation, means —

- (a) any corporation in which the first-mentioned corporation or its subsidiary has, or the first-mentioned corporation and its subsidiary together have, an interest in shares entitling the beneficial owners thereof the right to cast, whether by proxy or in person, not less than 20% but not more than 50% of the total votes able to be cast at a general meeting of the second-mentioned corporation; or
- (b) any corporation, other than a subsidiary of the first-mentioned corporation or a corporation which is an associated corporation by virtue of paragraph (a), the policies of which the first-mentioned corporation or its subsidiary is, or the first-mentioned corporation together with its subsidiary are, able to control or influence materially;

“Audit Committee” means an Audit Committee referred to in regulation 14;

“board committee” means any of the committees specified in regulation 8 and the Executive Committee referred to in regulation 7;

“chief regulatory officer” in relation to a regulated institution, means any person, by whatever name described, who is –

- (a) in the direct employment of, or action for or by arrangement with the regulated institution; and
- (b) principally responsible for overseeing regulatory issues and puts in place processes to manage any perceived or actual conflicts of interest arising from the regulatory and commercial functions of the regulatory institution;

“chief risk officer” in relation to a regulated institution, means any person, by whatever named described, who is –

- (a) in the direct employment of, or acting for or by arrangement with the regulated institution; and
- (b) principally responsible for overseeing the risk management function of the regulated institution;

“Conflicts Committee” means a Conflicts Committee referred to in regulation 15;

“executive director” means a director who is concurrently an executive officer and “non-executive director” shall be construed accordingly;

“executive officer”, in relation to a corporation, means any person, by whatever name described, who —

- (a) is in the direct employment of, or acting for or by arrangement with, the corporation; and
- (b) is concerned with, or takes part in, the management of the corporation on a day-to-day basis;

“foreign owned regulated institution” means a regulated institution which is a subsidiary of another corporation incorporated or otherwise established outside Singapore;

“immediate family”, in relation to an individual, means the individual’s spouse, child, adopted child, step-child, brother, step-brother, sister, step-sister, parent or step-parent;

“independent director”, in relation to a regulated institution, means a director who —

- (a) is independent from any management and business relationship with the regulated institution;
- (b) is independent from any substantial shareholder of the regulated institution; and
- (c) has not served on the board of the regulated institution for a continuous period of 9 years or longer;

“member” —

- (a) in relation to an approved exchange or an approved clearing house, has the same meaning as in section 2 of the Act; and
- (b) in relation to an approved holding company, means a person who holds membership of any class or description in an approved exchange or an approved clearing house of which the approved holding company is the holding company;

“Nominating Committee” means a Nominating Committee referred to in regulation 9;

“permanent resident” means any individual who is not subject to any restriction as to his period of residence in Singapore imposed under the provisions of any written law relating to immigration for the time being in force;

“Risk Management Committee” means a Risk Management Committee referred to in regulation 15A;

“regulated institution” means an approved exchange, an approved clearing house, a licensed trade repository or an approved holding company listed in column (A) of the Schedule to whom the respective regulations listed in the column (B) of the Schedule would be applicable;

“Remuneration Committee” means a Remuneration Committee referred to in regulation 13.

(2) In these Regulations, in relation to a company which may dispense with the holding of annual general meetings under section 175A of the Companies Act (Cap. 50) —

- (a) a reference to the doing of anything at an annual general meeting of the company shall be read as a reference to the doing of that thing by way of a resolution by written means in accordance with the Companies Act; and
- (b) a reference to the date of an annual general meeting of the company shall, unless the meeting is held, be read as a reference to the date of expiry of the period within which the meeting is required by law to be held.

PART II GOVERNANCE OF REGULATED INSTITUTIONS

Independence from management and business relationships

3.—(1) In these Regulations, subject to regulation 5, a director shall be considered to be independent from management and business relationships with a regulated institution if —

- (a) the director has no management relationship with the regulated institution or any of its subsidiaries; and
- (b) the director has no business relationship with the regulated institution or any of its subsidiaries, or with any officer of the regulated institution,

that could interfere, or be reasonably regarded as interfering, with the exercise of the director’s independent business judgment with regard to the interest of the regulated institution.

(2) Without prejudice to paragraph (1)(a), a director shall not be considered to be independent from management relationships with a regulated institution or any of its subsidiaries if —

- (a) he is employed by the regulated institution or any of its subsidiaries, or has been so employed at any time during the

current financial year or any of the preceding 3 financial years of the regulated institution or any of its subsidiaries;

(b) any member of his immediate family —

(i) is employed by the regulated institution or any of its subsidiaries as an executive officer whose compensation is determined by the Remuneration Committee of the regulated institution or any of its subsidiaries; or

(ii) has been so employed at any time during the current financial year or any of the preceding 3 financial years of the regulated institution or any of its subsidiaries; or

(c) he is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the management of the regulated institution or any of its subsidiaries.

(3) Without prejudice to paragraph (1)(b) but subject to regulation 5, a director shall not be considered to be independent from business relationships with a regulated institution or any of its subsidiaries if —

(a) he is a director, a substantial shareholder or an executive officer of any corporation, or a partner of a firm or a limited liability partnership or a sole proprietor, where such corporation, firm, limited liability partnership or sole proprietor carries on business for purposes of profit to which the regulated institution or any of its subsidiaries has made, or from which the regulated institution or any of its subsidiaries has received, substantial payments in the current or immediately preceding financial year;

(b) he is receiving or has received, any compensation from the regulated institution or from any of its subsidiaries, other than compensation received for his services as a director or as an employee, at any time during the current or immediately preceding financial year of the regulated institution;

(c) in relation to a regulated institution, he is a director or a substantial shareholder of a corporation which is —

(i) a member of; or

(ii) a related corporation of a member of,

the regulated institution, or any of its subsidiaries;

(d) in relation to the regulated institution, he is employed by, is receiving or has, at any time during the current or immediately preceding financial year of the regulated institution, received any compensation from a corporation which is —

- (i) a member of the regulated institution;
- (ii) a related corporation of a member of the regulated institution;
- (iii) a member of a subsidiary of the regulated institution; or
- (iv) a related corporation of a member of a subsidiary of the regulated institution,

and, in the case referred to in sub-paragraph (ii) or (iv), he is responsible for or engages in the activities of the member; or

(e) any member of his immediate family is —

- (i) a director or a substantial shareholder of a corporation which is a member of —
 - (A) the regulated institution; or
 - (B) any of the subsidiaries of the regulated institution; or
- (ii) employed by a corporation which is a member of —
 - (A) the regulated institution; or
 - (B) any of the subsidiaries of the regulated institution,

as an executive officer whose compensation is determined by the Remuneration Committee of that corporation.

(4) For the purposes of paragraph (3)(a), “payments” does not include payments for transactions involving standard services with published rates, or for routine or retail transactions or relationships, unless special or favourable treatment is accorded.

Independence from substantial shareholder

4.—(1) In these Regulations, subject to regulation 5, a director of a regulated institution shall be considered to be independent from a substantial shareholder of the regulated institution if he is not that substantial shareholder and is not connected to that substantial shareholder.

(2) Notwithstanding paragraph (1), a director of a regulated institution which is the sole subsidiary of an approved holding company which does not carry on any business other than the holding of the regulated institution, shall, if he is not a substantial shareholder of the regulated institution or the approved holding company, as the case may be, and is not connected to –

- (i) a substantial shareholder of the regulated institution (other than the approved holding company); or
- (ii) a substantial shareholder of the approved holding company,

be treated as if he were independent from the substantial shareholder of the regulated institution for the purposes of regulations 6(1), 7, 9(1), 13(1), 14(1), 15(1) and 15A(1).

(3) For the purposes of paragraph (1), a person is connected to a substantial shareholder if he is —

(a) in the case where the substantial shareholder is an individual —

- (i) a member of the immediate family of the substantial shareholder;
- (ii) employed by the substantial shareholder;
- (iii) employed by a subsidiary or an associated corporation of the substantial shareholder;
- (iv) an executive director of a subsidiary or an associated corporation of the substantial shareholder;
- (v) a non-executive director of a subsidiary or an associated corporation of the substantial shareholder;
- (vi) a partner of a firm or a limited liability partnership of which the substantial shareholder is also a partner; or

- (vii) accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder; or
- (b) in the case where the substantial shareholder is a corporation —
- (i) employed by the substantial shareholder;
 - (ii) employed by a subsidiary or an associated corporation of the substantial shareholder;
 - (iii) a director of the substantial shareholder;
 - (iv) an executive director of a subsidiary or an associated corporation of the substantial shareholder;
 - (v) a non-executive director of a subsidiary or an associated corporation of the substantial shareholder;
 - (vi) a partner of a firm or a limited liability partnership of which the substantial shareholder is also a partner; or
 - (vii) accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder.

Determination by Nominating Committee

5.—(1) The Nominating Committee of a regulated institution may determine that a director of the regulated institution who is —

- (a) not considered independent from business relationships with the regulated institution under regulation 3(3), respectively; or
- (b) not considered independent from a substantial shareholder of the regulated institution because of any relationship specified in regulation 4(3)(a)(v) and (b)(v),

shall nonetheless be considered independent from management and business relationships with the regulated institution, or independent from a substantial shareholder of the regulated institution, as the case may be, if the Nominating Committee is satisfied that the director's independent business judgment and ability to act in the interest of the regulated

institution will not be impeded, despite the relationships specified in that regulation.

(2) The Nominating Committee of a regulated institution may determine that notwithstanding the occurrence of any event which may result in a director being not considered independent from –

(a) management and business relationships with the regulated institution; or

(b) a substantial shareholder of the regulated institution,

the director shall nonetheless be considered independent from management and business relationships with the regulated institution, or independent from a substantial shareholder of the regulated institution, as the case may be, if the Nominating Committee is satisfied that the director's independent business judgment and ability to act in the interest of the regulated institution will not be impeded.

(3) If —

(a) at any time, the Authority is not satisfied that a director is independent notwithstanding any determination of the Nominating Committee made under paragraph (1) or (2); and

(b) the lack of independence of that director would result in a failure to comply with any of the requirements under regulation 6(1), 7, 9(1), 13(1), 14(1), 15(1) or 15A(1), the Authority shall direct the regulated institution to rectify the composition of the board of directors or any relevant committee in accordance with the requirements under regulation 6(1), 7, 9(1), 13(1), 14(1), 15(1) or 15A(1), as the case may be, within such time, and subject to such conditions or restrictions, as the Authority may specify.

(4) Where the Authority has given a direction to a regulated institution under paragraph (2), the requirements under regulation 6(1), 7, 9(1), 13(1), 14(1), 15(1) or 15A(1), as the case may be, shall not apply to the regulated institution during the period between the time the Authority makes the direction and the time by which the regulated institution is required to rectify the composition of the board of directors or any relevant committee in accordance with the direction.

Board of directors

6.—(1) Subject to paragraphs (2), (3) and (4) and regulations 5(3) and 18, a regulated institution shall have a board of directors comprising —

(a) in the case of a foreign-owned regulated institution, at least one-third of directors who are Singapore citizens or permanent residents or, in any other case, at least a majority of directors who are Singapore citizens or permanent residents; and

(b) at least a majority of directors who are independent directors.

(2) Where a single substantial shareholder holds 50% or more of the share capital or the voting power in a regulated institution, paragraph (1)(b) shall not apply to the regulated institution only if the regulated institution has —

(a) at least a majority of directors who are independent from management and business relations with the regulated institution; and

(b) at least one-third of directors who are independent directors.

(3) If a member of the board of directors resigns or ceases to be a member of the board of directors for any other reason, the regulated institution shall —

(a) notify the Authority of the event within 14 days after the occurrence of the event; and

(b) on or before its next annual general meeting take steps as may be necessary to rectify the composition of the board of directors in accordance with the requirements prescribed under paragraph (1).

(4) Notwithstanding paragraph (3), the Authority may, upon being notified under paragraph (3)(a), direct the regulated institution to rectify the composition of the board of directors in accordance with the requirements under paragraph (1) subject to such conditions or restrictions as the Authority may specify, and the regulated institution shall comply with that direction.

(5) The board of directors shall maintain records of all its meetings.

Executive Committee

7. Where the board of directors of a regulated institution has delegated any of its powers for the oversight of the regulated institution to an executive committee or any other committee by whatever name described (referred to in these Regulations as an Executive Committee), consisting of such directors as the board of directors thinks fit, regulation 6 (other than regulation 6(1)(a)) shall apply, with the necessary modifications, to the regulated institution in respect of the Executive Committee as if the Executive Committee were a board of directors.

Committees of board of directors

8. —(1) Subject to paragraph (3), a regulated institution shall have —

- (a) a Nominating Committee;
- (b) a Remuneration Committee;
- (c) an Audit Committee;
- (d) a Conflicts Committee; and
- (e) a Risk Management Committee.

(2) A regulated institution shall ensure that every member of each Committee referred to in paragraph (1) shall have unfettered access to information which the regulated institution is in possession of or has access to, for the purposes of carrying out the responsibilities of the Committee concerned.

(3) A licensed trade repository and an approved holding company which does not carry on any business other than solely being a holding company of a licensed trade repository need not have a conflicts committee.

Nominating Committee

9.—(1) Subject to paragraphs (2) and (5) and regulations 5(3) and 18, a regulated institution shall have a Nominating Committee comprising —

- (a) in the case of a foreign-owned regulated institution, at least 3 members of the board of directors or, in any other case, at least 5 members of the board of directors or such greater numbers of the board of directors as the Authority may approve; and
- (b) at least a majority of directors (including the chairman of the Nominating Committee) who are independent directors.

(2) Where a single substantial shareholder holds 50% or more of the share capital or the voting power in a regulated institution, paragraph (1)(b) shall not apply to the regulated institution only if the regulated institution has a Nominating Committee comprising –

(a) at least a majority of directors who are independent from management and business relationships with the regulated institution; and

(b) at least one-third of directors (including the chairman of the Nominating Committee) who are independent directors.

(3) A regulated institution shall obtain the prior approval of the Authority for the appointment of the chairman and members of the Nominating Committee.

(4) Every member of the Nominating Committee shall be appointed to hold office until the next annual general meeting following that member's appointment, and shall be eligible for re-appointment.

(5) If a member of the Nominating Committee resigns, ceases to be a director or for any other reason ceases to be a member of the Nominating Committee –

(a) the regulated institution shall notify the Authority of the event within 14 days after the occurrence of the event; and

(b) if this results in a breach of any requirement under paragraph (1), the board of directors shall, within 3 months after that event, take steps as may be necessary to rectify the composition of the Nominating Committee in accordance with that requirement.

Responsibilities of Nominating Committee

10.—(1) The Nominating Committee of a regulated institution shall identify the candidates and review all nominations for the appointment of —

(a) each director;

(b) each member of each board committee (including the Executive Committee, if any); and

- (c) the chief executive officer, deputy chief executive officer , chief financial officer, chief risk officer and chief regulatory officer

of the regulated institution.

(2) Subject to paragraph (3), the Nominating Committee shall determine the criteria to be applied in identifying a candidate or reviewing a nomination for the purposes of these Regulations.

(3) The criteria to be applied in identifying a candidate or reviewing a nomination for the purposes of these Regulations shall include the following:

- (a) the appointment of the candidate or nominee will not result in non-compliance with the requirements under regulations 6(1), 7, 9(1), 13(1), 14(1), 15(1) and 15A(1); and
- (b) the candidate or nominee is a fit and proper person for the office and is qualified for the office, taking into account the candidate's or nominee's track record, age, experience, capabilities, skills and such other relevant factors as may be determined by the Nominating Committee.

(3A) The Nominating Committee shall review the reasons provided by each of the persons referred to in paragraph (1) for his resignation from his appointment with the regulated institution.

(4) The Nominating Committee shall maintain records of all its meetings.

Determination of independence of directors

11.—(1) Where a person is proposed to be appointed as a director, prior to his appointment, the Nominating Committee —

- (a) shall determine —
- (i) whether he is independent from management and business relationships with the regulated institution; and
- (ii) whether he is independent from any substantial shareholder of the regulated institution,

using the criteria set out in regulation 3 or 4, as the case may be, and, where applicable, in accordance with regulation 5; and

(b) shall maintain a record of its determination.

(2) Prior to every annual general meeting of a regulated institution, or at least once a calendar year, the Nominating Committee —

(a) shall determine —

- (i) whether each existing director is independent from management and business relationships with the regulated institution; and
- (ii) whether each existing director is independent from any substantial shareholder of the regulated institution,

using the criteria set out in regulation 3 or 4, as the case may be, and, where applicable, in accordance with regulation 5;

(aa) shall review and assess whether each existing director remains qualified for the office using the criteria set out in regulation 10(3); and

(b) shall maintain a record of its determination and its assessment, respectively.

Furnishing information to Authority

12.—(1) A regulated institution shall, after its Nominating Committee has concluded its deliberations in respect of the matters under regulations 10 and 11 and the board of directors has concurred with the Nominating Committee —

(a) notify the Authority in writing of the particulars of the persons proposed to be appointed to the positions referred to in regulation 10(1)(a) and (b), including whether the requirements for independence in regulations 3 and 4 are satisfied;

(aa) notify the Authority in writing of the review and assessment of each existing director referred to in regulation 11(2)(aa);

(b) in the case where the Nominating Committee has made a determination under regulation 5(1), provide the Authority with the Nominating Committee's explanation of its decision as to why the director should be considered independent; and

- (c) in the case where the Nominating Committee has made a determination under regulation 5(2), provide the Authority with the Nominating Committee's explanation of its decision as to why the director should be considered independent within 14 days from the occurrence of the event mentioned in regulation 5(2); and
- (d) furnish to the Authority such other information as the Authority may require.

(2) A regulated institution shall notify the Authority, as soon as practicable, of the occurrence of any event which may result in a director being not considered independent from management and business relationships with the regulated institution or not considered independent from a substantial shareholder of a regulated institution.

Remuneration Committee

13.—(1) Subject to paragraphs (3), (6) and (7) and regulations 5(3) and 18, a regulated institution shall have a Remuneration Committee comprising —

- (a) at least 3 members of the board of directors of the regulated institution, all of whom satisfy the requirements set out in paragraph (2); and
- (b) at least a majority of directors (including the chairman of the Remuneration Committee) who are independent directors;

(2) The requirements referred to in paragraph (1)(a) to be satisfied by a director are that —

- (a) the matters referred to in regulation 3(3)(c), (d) and (e) do not apply to him; or
- (b) if any matter referred to in regulation 3(3)(c), (d) or (e) applies to him —
 - (i) the Nominating Committee of the regulated institution has determined under regulation 5(1) that he shall nonetheless be considered independent from management and business relationships with the regulated institution; and

- (ii) the Authority has not given a direction under regulation 5(3) in relation to his appointment to the Remuneration Committee.

(3) Where a single substantial shareholder holds 50% or more of the share capital or the voting power in a regulated institution, paragraph (1)(b) shall not apply to the regulated institution only if the regulated institution has a Remuneration Committee comprising —

(a) at least a majority of directors who are independent from management and business relationships with the regulated institution; and

(b) at least one-third directors (including the chairman of the Remuneration Committee) who are independent directors.

(4) In addition to such other responsibilities as may be determined by the board of directors of a regulated institution, the Remuneration Committee of the regulated institution shall be responsible for —

(a) recommending a framework for determining the remuneration of directors of the regulated institution; and

(b) recommending a framework for determining the remuneration of the executive officers of the regulated institution which shall include the following elements and factors in the design and operation of the framework:

(i) the remuneration package of each executive officer of the regulated institution —

(A) shall be aligned to the specific job functions undertaken by the executive officer and where the executive officer undertakes any of the regulated institution's control job functions, the remuneration package of that executive officer shall be determined independently of the business functions of the regulated institution;

(B) shall take into account input from the regulated institution's control job functions as may be relevant to the specific job function undertaken by the executive officer;

(C) shall be aligned with the risks that the regulated institution undertakes in its business that is relevant to the specific job function undertaken by the executive officer;

(D) shall be sensitive to the time horizon of risks that the regulated institution is exposed to which includes ensuring that variable compensation payments shall not be finalised over short periods of time when risks are realised over long periods of time;

(E) shall, in relation to the quantum of bonus payable to the executive officer, be linked to his personal performance, the performance of his specific job function as a whole and the overall performance of the regulated institution; and

(F) shall, in relation to the rationale for the mix of cash, equity and other forms of incentives, be justified; and

(ii) the size of the bonus pool of the regulated institution shall be linked to the overall performance of the regulated institution;

(c) recommending the remuneration of each director and executive officer of the regulated institution based on the frameworks referred to in sub-paragraphs (a) and (b), respectively; and

(d) reviewing, at least once in each year, the remuneration practices of the regulated institution to ensure that they are aligned with the recommendations made in accordance with sub-paragraphs (a),(b) and (c).

(4A) In paragraph (4) —

“business functions” means the job functions in the regulated institution that conduct risk-taking activities in relation to the business of the regulated institution;

“control job functions” means the following job functions:

(a) risk control and management;

(b) finance;

(c) compliance;

(d) internal audit;

(e) human resources; and

(f) risk control related back office operations.

(5) The Remuneration Committee shall maintain records of all its meetings.

(6) If a member of the Remuneration Committee resigns, ceases to be a director or for any other reason ceases to be a member of the Remuneration Committee —

(a) the regulated institution shall notify the Authority of the event within 14 days after the occurrence of the event; and

(b) if this results in a breach of any requirement under paragraph (1), the board of directors shall, within 3 months of that event, take steps as may be necessary to rectify the composition of the Remuneration Committee in accordance with that requirement.

Audit Committee

14.—(1) Subject to paragraph (4) and regulations 5(3) and 18, a regulated institution shall have an Audit Committee comprising —

(a) at least 3 members of the board of directors of the regulated institution, all of whom are independent from management and business relationships with the regulated institution; and

(b) at least a majority of directors (including the chairman of the Audit Committee) who are independent directors.

(2) The Audit Committee shall, in addition to such other responsibilities as may be determined by the board of directors or provided under written law, be responsible for the adequacy of the external and internal audit functions of the regulated institution, including reviewing the scope and results of audits carried out in respect of the operations of the regulated institution and the independence and objectivity of the regulated institution's external auditors.

(3) The Audit Committee shall maintain records of all its meetings.

(4) If a member of the Audit Committee resigns, ceases to be a director or for any other reason ceases to be a member of the Audit Committee

- (a) the regulated institution shall notify the Authority of the event within 14 days after the occurrence of the event; and
- (b) if this results in a breach of paragraph (1), the board of directors shall, within 3 months after that event, take steps as may be necessary to rectify the composition of the Audit Committee in accordance with that requirement.

Conflicts Committee

15.—(1) Subject to paragraph (4) and regulations 5(3) and 18, a regulated institution shall have a Conflicts Committee comprising —

- (a) at least 3 members of the board of directors of the regulated institution, all of whom are independent from management and business relationships with the regulated institution; and
- (b) at least a majority of directors (including the chairman of the Conflicts Committee) who are independent directors.

(2) A regulated institution shall obtain the prior approval of the Authority for the appointment of the chairman and members of the Conflicts Committee.

(3) In addition to such other responsibilities as may be determined by the board of directors of a regulated institution, the Conflicts Committee shall be responsible for —

- (a) reviewing the adequacy of the arrangements within the regulated institution and its subsidiaries for dealing with any perceived or actual conflict between any of the following:
 - (i) the interests arising from the regulation and supervision of —
 - (A) the members of the regulated institution and its subsidiaries; and
 - (B) the relevant corporations of the regulated institution;

- (ii) the commercial interests of the regulated institution or any of its subsidiaries, including any conflict of interests or potential conflict of interests arising as a result of the listing of the shares of the regulated institution on any market operated by the regulated institution or any of its subsidiaries; and
- (b) carrying out regular reviews of the adequacy of the plans, budget and resources of the regulated institution and its subsidiaries in relation to the regulation and supervision of —
 - (i) the members of the regulated institution and its subsidiaries; and
 - (ii) the relevant corporations of the regulated institution,

and reporting to the board of directors if it is of the view that insufficient funding and resources are being devoted by the regulated institution or its subsidiary, as the case may be, to the supervision of the members, their subsidiaries and the relevant corporations.
- (4) If a member of the Conflicts Committee resigns, ceases to be a director or for any other reason ceases to be a member of the Conflicts Committee —
 - (a) the regulated institution shall notify the Authority of the event within 14 days the occurrence of the event; and
 - (b) if this results in a breach of any requirement under paragraph (1), the board of directors shall, within 3 months within that event, take steps as may be necessary to rectify the composition of the Conflicts Committee in accordance with that requirement.
- (5) In paragraph (3), “relevant corporations” —
 - (a) in relation to a regulated institution which is an approved exchange, means corporations whose securities are listed for quotation on a securities market operated by the approved exchange or any of its related corporations; and
 - (b) in relation to a regulated institution which is an approved clearing house or an approved holding company, means corporations

whose securities are listed for quotation on a securities market operated by any of the related corporations of the approved clearing house or approved holding company, as the case may be.

Risk Management Committee

15A.—(1) Subject to paragraph (4) and regulations 5(3) and 18, a regulated institution shall have a Risk Management Committee comprising —

(a) at least 3 member of the board of directors of the regulated institution; and

(b) at least a majority of directors (including the chairman of the Risk Management Committee) who are non-executive directors.

(2) The Risk Management Committee shall, in addition to such other responsibilities as may be determined by the board of directors, be responsible for overseeing —

(a) the establishment and the operation of an independent risk management system for managing risks on an enterprise-wide basis; and

(b) the adequacy of the risk management function of the regulated institution, including ensuring that it is sufficiently resourced to monitor risk by the various risk categories and that it has appropriate independent reporting lines.

(3) The Risk Management Committee shall maintain records of all its meetings.

(4) If a member of the Risk Management Committee resigns, cease to be a director or for any other reason ceases to be a member of the Risk Management Committee —

(a) the regulated institution shall notify the Authority of the event within 14 days after the occurrence of the event; and

(b) if this results in a breach of any requirement under paragraph (1), the board of directors shall, within 3 months after the event, take steps as may be necessary to rectify the composition of the Risk Management Committee in accordance with that requirement.

Approval of Authority

15B.—(1) A regulated institution shall obtain the prior approval of the Authority for the appointment of the deputy chief executive officer, chief financial officer, chief risk officer and chief regulatory officer.

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether to grant its approval under paragraph (1), have regard to whether the person is a fit and proper person to hold the office.

Executive officers

15C.—(1) A regulated institution shall not appoint any person as its executive officer while that person is concurrently –

- (a) employed by a substantial shareholder of the regulated institution (other than, in the case where the regulated institution is a subsidiary of another regulated institution (referred to in this regulation as the parent regulated institution), the parent regulated institution or, in the case where the regulated institution is a subsidiary of an approved holding company, the approved holding company);
- (b) an executive officer of a subsidiary or an associated corporation of the regulated institution;
- (c) where the regulated institution is a subsidiary of a parent regulated institution, employed by a substantial shareholder of the parent regulated institution, or a subsidiary or an associated corporation of the substantial shareholder of the parent regulated institution; or
- (d) where the regulated institution is a subsidiary of an approved holding company, employed by a substantial shareholder of the approved holding company or an affiliate of the substantial shareholder of the approved holding company.

Separation of roles

16.—(1) A regulated institution shall not appoint any of the following persons as the chairman of the board of directors —

- (a) any of its executive directors;

- (b) any person who is a member of the immediate family of the chief executive officer of the regulated institution.

Exemption

17.—(1) The Authority may, on the application of a regulated institution, by notice in writing exempt the regulated institution from all or any of the provisions of these Regulations, subject to such conditions or restrictions as the Authority may determine, if the Authority considers it appropriate to do so in the circumstances of the case.

(2) In the case where the holding company of any regulated institution is itself an approved holding company which complies with all requirements under these Regulations, the Authority may exempt the regulated institution from all or any of the requirements under these Regulations, subject to such conditions or restrictions as the Authority may determine.

(3) The regulated institution shall comply with the conditions and restrictions imposed on it under paragraph (1) or (2).

(4) An exemption granted under paragraph (1) or (2) may be withdrawn by the Authority at any time.

Exceptions

18.—(1) Subject to paragraphs (2) and (3), the requirements under regulations 6(1), 7, 9(1), 13(1), 14(1), 15(1) and 15A(1) shall not apply in relation to a regulated institution—

(a) where —

- (i) there is a change in status of a director under regulation 3 or 4 during the period between the date immediately after the date of the director's appointment and the date immediately before the next annual general meeting of the regulated institution; and
- (ii) the regulated institution could not reasonably have known of that change on or before the date of the director's appointment; or

(b) where —

- (i) there is a change in status of a director under regulation 3 or 4 during the period between the date immediately after an annual general meeting of the regulated institution and the date immediately before the next annual general meeting of the regulated institution (other than the period referred to in sub-paragraph (a)(i)); and
- (ii) the regulated institution could not reasonably have known of that change on or before the date of the first-mentioned annual general meeting.

(2) Paragraph (1) shall not apply unless, in the circumstances referred to in paragraph (1)(a)(i) and (b)(i), the regulated institution, within 14 days of becoming aware of the change in status of the director, notifies the Authority of the change and, subject to paragraph (3) —

- (a) in respect of any requirement under regulation 6(1), at the next annual general meeting, takes steps as may be necessary to rectify the composition of the board of directors in accordance with that requirement; or
- (b) in respect of any requirement under regulation 7, 9(1), 13(1), 14(1), 15(1) or 15A(1), within 3 months after notifying the Authority of the change of status of the director, take steps as may be necessary to rectify the composition of the relevant committee in accordance with that requirement.

(3) Notwithstanding paragraph (2), the Authority may, upon being notified of a change in status of a director under paragraph (2), direct the regulated institution —

- (a) to take steps as may be necessary to rectify the composition of the board of directors in accordance with the requirements under regulation 6(1) within such time before the next annual general meeting of the regulated institution and subject to such conditions or restrictions as the Authority may specify; or
- (b) to take steps as may be necessary to rectify the composition of the relevant committee in accordance with the requirements under regulation 7, 9(1), 13(1), 14(1), 15(1) or 15A(1), as the case may be, within such time before the expiration of 3 months from the date the regulated institution notifies the Authority of the change

and subject to such conditions or restrictions as the Authority may specify.

(4) The regulated institution shall comply with the direction under paragraph (3).

Offences

19.—(1) Any regulated institution which contravenes regulation 6(1) or (4), 8(1) or (2), 9(1), 12, 13(1), 14(1), 15(1), 15A(1), 15B(1), 15C(1), 16(1), 17(3) or 18(3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(2) Section 333(1) of the Act shall not apply to any offence referred to in paragraph (1).

PART III SAVINGS AND TRANSITIONAL PROVISION

Savings and transitional provision

[To be inserted after close of public consultation.]

Revocation

20. The Securities and Futures (Corporate Governance of Approved Exchanges Designated Clearing Houses and Approved Holding Companies) Regulations 2005 (G.N.No.S742/2005) are revoked.

THE SCHEDULE

Regulation 2

S/No	(A)	(B)
1.	Approved Exchange	All regulations
2.	Approved Clearing House	All regulations
3.	Licensed Trade Repository	All regulations except the following: (a) definition of “chief regulatory officer” in regulation 2; (b) regulation 3(3)(c) to (e);
4.	Approved Holding Company of an Approved Exchange	All regulations
5.	Approved Holding Company of an Approved Clearing House	All regulations
6.	Approved Holding Company of a Licensed Trade Repository	All regulations except the following: (a) definition of “chief regulatory officer” in regulation 2; (b) regulation 3(3)(c) to (e).

Made this [Commencement Date].

RAVI MENON
*Managing Director,
Monetary Authority of
Singapore.*



Monetary Authority of Singapore