MAS REVISIONS TO GUIDELINES ON LICENSING, REGISTRATION AND CONDUCT OF BUSINESS FOR FUND MANAGEMENT COMPANIES

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Note on MAS Revisions to Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies

This note summarises the Monetary Authority of Singapore's ("MAS") revisions in December 2021 as well as March and November 2022 to its Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies (the "Guidelines") which apply to Fund Management Companies ("FMCs"). For context, the Guidelines are issued pursuant to section 321 of the Securities and Futures Act 2001 ("SFA") and explain the minimum licensing criteria and business conduct requirements made under various SFA regulations. The revisions made by MAS primarily concern criteria for the licensing and registration of Licensed FMCs ("LFMCs") and Registered FMCs ("RFMCs").

1. December 2021 Revision: (a) Requirement for LFMC and RFMC applicants to demonstrate credible plans to manage third-party moneys within six months of being issued a licence or registration; and (b) availability of Retail LFMCs' PII to MAS

In the December 2021 revision to the Guidelines, MAS clarified that a person or entity that manages its own assets or moneys in both form and substance does not require a fund management licence or registration. A licence or registration will not be granted by the MAS to allow such a person or entity to qualify for tax incentives or to make use of fund structures that require the manager to be licensed. Towards this end, the MAS stated that LFMC and RFMC applicants will need to demonstrate that they have credible plans to manage third party moneys within six months of being issued a licence or registration.

Further, regarding Appendix 3 (Professional Indemnity Insurance ("PII") for Retail LFMCs), MAS has clarified that a copy of the Retail LFMCs' PII should be made available to MAS upon request. Previously, Retail LFMCs had to submit a copy of their PII to MAS annually.

2. March 2022 Revision: Increase in risk-based capital requirement for Retail LFMCs and Accredited/Institutional LFMCs

In the March 2022 revision to the Guidelines, MAS increased the risk-based capital requirement for Retail LFMCs and Accredited/Institutional LFMCs ("A/I LFMCs") required under the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations ("SF(FMR)R") and the MAS's Notice on Risk-based Capital Adequacy Requirements for Holders of Capital Market Services Licences ("SFA 04-N13"). Previously, Retail LFMCs and A/I LFMCs were required to maintain a risk-based capital of at least 120% of their operational risk requirement – this requirement has been revised to at least 120% of Retail LFMCs' and A/I LFMCs' total risk requirement.

What constitutes a total risk requirement for a particular Retail or A/I LFMC in turn depends on whether its average adjusted assets (as defined under Part III of SFA 04-N13) exceed the lower of either S$10mil or five times of its financial resources/adjusted net head office funds (whichever is applicable) (the

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"Threshold").

Where the average adjusted assets do not exceed the Threshold, the total risk requirement is the operational risk requirement and any other risk requirements that MAS may impose. Where the average adjusted assets exceed the Threshold, the total risk requirement includes counterparty risk, position risk, underwriting risk and large exposure risk requirements on top of the operational risk requirement and any other risk requirements that MAS may impose.

With this revision, a Retail LFMC or A/I LFMC with its average adjusted assets exceeding the Threshold may potentially face a much higher risk-based capital requirement to maintain where it is also exposed to considerable counterparty risk, position risk, underwriting risk and/or large exposure risk.

3. November 2022 Revision: Clarifications on potential factors considered by MAS in assessing whether the interests of an FMC's key individuals are sufficiently anchored to the FMC and aligned with those of third-party investors

Under the previous Guidelines, the criteria for the CEO and Executive Directors (the "Board") of Retail LFMCs, A/I LFMCs, Venture Capital Fund Managers ("VCFMs"), and RFMCs to have effective control of the Fund Management Company's activities and to ensure alignment of interest with investors were worded broadly with little guidance in terms of the factors that the MAS may take into consideration when assessing these criteria.

In the November 2022 revision to the Guidelines, the MAS introduced the broader concept of "stability" in the Board to assess whether an FMC's Board can assert effective control over the FMC's operations. In assessing the stability of an FMC's Board, the MAS stated that it may consider the following non-exhaustive factors such as:

- The tenure of the Board with the FMC and its related entities (where applicable).
- Where an FMC is not part of an established business group, and is owned by one or more individual shareholders (whether directly or through holding companies), the FMC's Board are expected to collectively hold and maintain a controlling stake (i.e., more than 50% effective voting interest) in the FMC. The CEO and Executive Directors must be able to exercise effective control over the FMC's operations, for which they are held accountable under the SFA.• The Board should not enter into any arrangement that would allow other persons to control how the Board exercise its controlling rights in respect of the FMC.

The MAS also stated in its latest revision that it may consider other non-exhaustive measures to anchor and align the interests of an FMC's Board with third-party investors, such as the provision of meaningful investments of seed capital by the FMC's CEO and Executive Directors alongside third-party investors in pooled funds. Although stated as a non-exhaustive consideration, this latest elaboration goes a step beyond the previously stated example of MAS potentially requiring the CEO and Executive Directors to hold meaningful shareholding stakes in the FMC.

Lastly, the MAS also clarified the minimum staffing and competency requirements for RFMCs, A/I LFMCs and Retail LFMCs. Previously, it was stated that there is no restriction on the CEO to take on multiple

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appointments (e.g., Executive Director, relevant professional and representative) within the firm if there are synergies. It has been clarified that this applies more broadly to any individual beyond the CEO.

Previously, the relevant professionals (i.e., CEO, Executive Directors, FMC representatives) must reside in Singapore. It has been clarified that these relevant professionals must be “Singapore-based”.

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