RESPONSE TO CONSULTATION PAPER

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<th>Consultation topic:</th>
<th>Proposed Framework for Singapore Variable Capital Companies</th>
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Confidentiality

I wish to keep the following confidential: 

(Please indicate any parts of your submission you would like to be kept confidential, or if you would like your identity to be kept confidential. Your contact information will not be published.)
General comments:
CFA Society Singapore ("CFAS") welcomes the opportunity to participate in the SGX Public Consultation on Possible Listing Framework for Dual Class Share Structures.

Please note that all feedback is made in our personal capacities as CFAS members and do not necessarily represent the views of the organisations where we work. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view.

Question 1. MAS seeks comments on the proposed legislative structure for S-VACCs.

CFAS agrees with the proposal to introduce a new legislative structure for S-VACCs so long as MAS retains ultimate supervisory authority over the SVACC's appointed asset managers and designated officers.

However, MAS should elaborate on the advantages of using such a structure as opposed to the traditional unit trust structure, not only in terms of how this can benefit the investment and fund management and industry but also the investing public.

Question 3. MAS seeks comments on the proposal that the S-VACC structure be used as a vehicle for CIS only, and on the proposed restriction on the use of the term, “S-VACC”.

We agree. We also presume that S-VACCs will be subject to the CIS code. We suggest that MAS clarify whether SVACCs are subject to the CIS code.

Question 4. MAS seeks comments on the proposal to allow S-VACCs to be structured as open-ended or closed-end funds, and to require the rights of and limits to redemption to be set out in the constitution of a S-VACC.

Our understanding is that variable capital companies or similar corporate structures established for purposes of collective investment schemes tend to be constituted as open-ended funds, as is the case in jurisdictions such as the UK (Open-ended investment company or OEIC), Luxembourg (Société D'investissement À Capital Variable or SICAV) and Hong Kong (Open-ended fund company or OFC).

To avoid confusion especially with the retail investors, we suggest that S-VACCs should not also designate closed-end funds.

We agree that the rights and limits to redemption should be clearly set out in the constitution of the SVACC. We further suggest that the rights and limits should be more actively made clear to the investor (e.g. in the marketing documents, subscription documents etc.)
Question 5. MAS seeks comments on the proposed cellular structure for S-VACCs. See comments for Question 6.

Question 6. MAS seeks comments on the proposed safeguards against the risk of cross-cell contagion within a S-VACC.

We note that Clause 4.6 indicates that the fund manager is allowed to invest in assets located in a jurisdiction that does not have a cellular company structure, only if any risk of cross contagion has been reasonably mitigated. We suggest that MAS clarify what “reasonably mitigated” means.

We also suggest that MAS establish detailed procedures required by the S-VACC’s Board of Directors to identify & report on potential cross contagion, as well as itemised steps for cross contagion mitigation.

We note that given that S-VACCs may have the additional risk of cross cell contagion, investors may expect managers to obtain a higher return. Would this structure and the expectations lead managers to undertake more risky investments? If so, this should be clearly disclosed.

Question 7. MAS seeks comments on the proposal to allow a sub-fund to be wound up as if it were a separate legal person in the event of the sub-fund’s insolvency, and on the ring-fencing of each sub-fund’s assets and liabilities during insolvent liquidation.

We note that Clause 4.2 indicates that each sub-fund is to operate without legal personality, yet it can be wound up as a separate legal person. This might create confusion. We suggest that MAS clarify the mechanics of allowing sub-funds to be wound up as if they were separate legal persons if they are not in fact separate.

Question 8. MAS seeks comments on the proposal for the valuation and redemption of shares in a S-VACC to be carried out at NAV, except where the S-VACC is listed on a securities exchange.

This is fine in concept, but may be difficult to apply to closed-end funds in practice. Closed-end funds generally invest in less liquid investments which suggest that obtaining an accurate NAV may not be straightforward.
Question 9. MAS seeks comments on the proposal to allow directors of S-VACCs to dispense with AGMs.

We support the proposal to allow directors of S-VACCs to dispense with AGMs as it is likely to be difficult to achieve a quorum for the AGM.

However, the Board of Directors of an S-VACC should publish a detailed Management Discussion and Analysis of the funds’ circumstances with regards to its market segment, investment strategy and performance outcome.

Question 10. MAS seeks comments on the proposals for the appointment of auditors, not requiring audit committees, as well as the preparation and disclosure of financial statements of S-VACCs.

We support the proposal to not require audit committees; this is the current practice in the industry. As the boards of S-VACCs are likely to be small, it does not make sense to have various committees.

We suggest however that the same process and requirements that are applicable to unit trusts should be in force for S-VACCs.

Question 11. MAS seeks comments on whether S-VACCs should be allowed to prepare their financial statements using an applicable ASC Standard, the IFRS or RAP 7 (for S-VACCs consisting of Authorised Schemes). What are the considerations that may influence the accounting standards which a S-VACC uses (e.g. fund manager’s operations, investors’ preference or location of assets)?

The location of the assets and the fund manager operations should determine the accounting standards adopted. However, MAS should require each S-VACC to ensure homogeneity in accounting standards across all of its sub-funds and its fund managers.

Question 12. MAS seeks comments on the proposal regarding the disclosure of a S-VACC’s shareholder register.

We support the proposal that S-VACCS’s shareholder register should not be made public as this is critical. However shareholder names should be made available to legal and supervisory authorities (as per the prevailing practice with private & retail bank client data).
Question 13. MAS seeks comments on the proposal to adopt the same requirements on beneficial ownership information and nominee directors as those under the CA amendments.

We suggest that nominee directors and other responsible officer information should be recorded and made public as they act in a fiduciary capacity.

Question 14. MAS seeks comments on the proposed requirements on a S-VACC’s directors, residency and name of a S-VACC.

S-VACC directors are required under the proposed section 110 to be fit and proper persons. We request MAS to provide further guidance relating to how fitness and propriety should be assessed (e.g. adverse news screening, self-declaration), and whether there are grounds to appoint as director an individual with some adverse information but has nevertheless been considered by the board as meeting the fit and proper criteria.

Question 15. MAS seeks comments on the proposal to allow only Permissible Fund Managers to manage S-VACCs.

The characteristics and criteria of "Permissible Fund Managers" should be clearly stipulated and become a part of the requisite criteria under which the S-VACC is supervised.

The Consultation defines “Permissible Fund Managers” as licensed fund managers, registered fund management companies or exempted entities [financial institutions exempted under sections 99(1)(a), (b), (c) or (d) of the SFA from the requirement to hold a capital markets services licence to carry on business in fund management i.e., a bank licensed under the Banking Act (Cap. 19), a merchant bank approved under the MAS Act (Cap. 186), a finance company licensed under the Finance Companies Act (Cap. 108) or a company or co-operative society licensed under the Insurance Act (Cap. 142)].

We would like to suggest this structure be made available to REIT managers, Business Trust managers and other property asset managers who are currently exempt from licensing under paragraph 5(1)(h) of the Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations.
Question 16. MAS seeks comments on the proposed AML/CFT requirements on S-VACCs.
No comment.

Question 17. MAS seeks comments on the proposal for S-VACCs consisting of Authorised or Restricted Schemes to have an approved custodian that is an Approved Trustee, and to align the duties of the approved custodian with those of an Approved Trustee under the SFA, except where such duties are already imposed on the S-VACC or its directors as covered under the S-VACC legislation.

We do not support the proposal for S-VACCs to have an Approved Custodian that is an Approved Trustee, as not all S-VACCs will be unit trusts and this will limit the availability of custodians for S-VACCs.

Question 18. MAS seeks comments on the proposal to adopt the same requirements on re-domiciliation as those introduced by ACRA under the CA for S-VACCs. In particular, what aspects of the CA re-domiciliation provisions should be modified for S-VACCs?
No comment.

Question 19. MAS seeks comments on the type of foreign structures (including their original jurisdiction of domicile) which would seek to re-domicile as an S-VACC in Singapore and the issues envisaged.

An example of the types of foreign structures which could seek to re-domicile as an S-VACC include Master-Feeder funds domiciled in the Cayman Islands, regulated by CIMA.

With regards to re-domiciling, a longer transitional period is preferred, say up to 24 months. Re-domiciliation should have no impact on the valuation of the fund’s underlying investments (i.e. no gain no loss), and the reporting of fund performance should be contiguous (i.e. performance migration).

We would like MAS to clarify on two points:

a) For fund clients who are based in the U.S. or in jurisdictions with significantly different reporting and tax requirements, how will re-domiciling in Singapore advantage or disadvantage them?

b) What incentives can be provided to funds looking to re-domicile in Singapore to offset the administrative costs and resources expended in the re-domiciliation exercise?
Question 20. MAS seeks comments on the proposal to adopt a winding-up regime similar to that under the CA for S-VACCs and sub-funds, as well as the proposed modifications.
No comment.

Question 21. MAS seeks comments on the proposal to allow S-VACCs to issue debentures, including to allow S-VACCs to issue debentures relating to specific sub-funds.
No comment.

Question 22. MAS seeks comments on the proposal to adopt a receivership regime similar to that under the CA for S-VACCs and their sub-funds.
No comment.

Question 23. MAS seeks comments on the proposal to not adopt the mechanisms for arrangements, reconstructions and amalgamations under the CA.
No comment.

Question 24. MAS seeks comments on the proposal to require the constitution of a S-VACC to clearly set out shareholders’ rights in respect of a scheme of arrangement, merger, reconstruction or amalgamation involving the S-VACC (including any of its sub-funds)
No comment.