**CITIBANK NA, SINGAPORE BRANCH**
**RESPONSE TO CONSULTATION PAPER ON AMENDMENTS TO SECURITIES AND FUTURES ACT – REPRESENTATIVE NOTIFICATION FRAMEWORK**

## GUIDELINES ON SUBSTANTIVE ASSESSMENT OF MERGERS – DE FACTO CONTROL

1. Part 3 of the Guidelines define a merger as including de facto mergers. In particular, paras 3.10-3.15 provide that CCS would regard as a merger, an arrangement whereby a person who lends money to an undertaking "gains decisive influence over the undertaking's activities", e.g. by threatening to withdraw loan facilities if a particular activity is not pursued, or where the loan conditions "confer on the lender ability to exercise rights over and above those necessary to protect the investment."

2. At the industry briefing conducted by the CCS on 30 October 2006, CCS commented that this would refer to exceptional situations and was not meant to capture bona fide lending activities by financial institutions to companies. We **seek detailed guidance from CCS as to when it would consider the loan conditions to be "over and above those necessary to protect the investment**". We believe that detailed guidance would be very beneficial given that there are significant lending activities done by banks and financial institutions in Singapore. We suggest that this principle should not operate in a manner that could stifle the development of Singapore as an international financial centre. In this regard, we suggest that **practical examples would be useful to illustrate the application of this principle in practice**.

## CARVE OUT UNDER 4TH SCHEDULE – MERGER APPROVED UNDER "WRITTEN LAW"

3. The carve out for mergers which are approved by sectoral regulators under "written law" under the 4th Schedule has been redrafted in the Amendment Bill as follows:

> "The Section 54 prohibition shall not apply to any merger:
> (a) approved by any Minister or regulatory authority (other than the Commission) under any written law; or
> (b) under the jurisdiction of any regulatory authority (other than the Commission) under any written law relating to competition or code of practice relating to competition under any written law."

4. The phrase *"written law"* is defined under the Interpretation Act as referring to statutes and subsidiary legislation. We s**eek clarification on the scope of the term "*written law*" particularly in relation to financial institutions regulated by the Monetary Authority of Singapore (MAS)**.

5. In relation to financial institutions , where the merger activities of a financial institution is subject to MAS' approval under statute, it would be clear that that this would not be subject to the Section 54 prohibition. However, what is less

clear is where MAS stipulates merger restrictions under as conditions of licencing or other regulatory approvals. For instance, Section 88 of the Securities and Futures Act (Chapter 289) provides that MAS may grant or renew a licence subject to such conditions or restrictions as it thinks fit. Also, Section 27 of the Monetary Authority of Singapore Act (Chapter 186) allows MAS to issue "directions". One example of such a "direction" would be Directive 10 issued by the MAS, which prohibits merchant banks from acquiring an interest exceeding 20% or more in the share capital of any company.

6. We therefore seek clarification as to whether a merger that has been approved by MAS pursuant to a condition of licence, or pursuant to a directive would be regarded as mergers approved "under a written law".

## INTER-RELATIONSHIP BETWEEN CCS AND SECTORAL REGULATORS

7. We **seek clarification on the inter-relationship between CCS and sectoral regulators**. Where a financial institution which is regulated by MAS is involved in a merger activity (which is not subject to approval by MAS), should the institution deal with the sectoral regulator (MAS) or CCS or both?