

# RESPONSE TO FEEDBACK RECEIVED

May 2017

## Response to Feedback Received – Enhancements to Regulatory Requirements on Protection of Customer's Moneys and Assets

MAS

Monetary Authority of Singapore

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## **1 Preface**

1.1. On 19 July 2016, the Monetary Authority of Singapore (“MAS”) issued a consultation paper on proposals to enhance the regulatory requirements governing the protection of customer’s moneys and assets held by capital markets intermediaries<sup>1</sup>. The proposals sought to enhance the requirements relating to the safeguarding, identification and use of customer’s moneys and assets, and disclosures to customers. Capital markets intermediaries refer to (i) entities which hold a Capital Markets Services (“CMS”) licence to conduct regulated activities (“CMS licensees”) under the Securities and Futures Act (“SFA”); and (ii) banks licensed under the Banking Act, merchant banks approved under the Monetary Authority of Singapore Act and finance companies licensed under the Finance Companies Act which conduct regulated activities under the SFA.

1.2. The consultation period closed on 20 August 2016, 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 carefully considered the feedback received on the proposed enhancements to the requirements governing the protection of customer’s moneys and assets held by capital markets intermediaries. Comments received that are of wider interest, together with MAS’ responses, are set out in the ensuing sections of this paper.

1.4. The proposals will need to be implemented by way of amendments to the regulations under the SFA. MAS will consult on the amendments made to these regulations separately.

## **2 Measures relating to the Safeguarding, Identification and Use of Customer’s Moneys and Assets**

### ***Definition of Customer’s Moneys***

2.1 To ensure that all customers’ moneys received and held by capital markets intermediaries are accorded protection under the Securities and Futures (Licensing and Conduct of Business) Regulations (“LCB Regulations”), MAS proposed to expand the definition of “customer’s moneys” under the LCB Regulations to cover contractual rights arising from transactions entered into by the capital markets intermediaries on behalf of

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<sup>1</sup> Refer to MAS’ Response Paper (dated 26 May 2017) on [Enhancement to Regulatory Requirements on Protection of Customer's Moneys and Assets](#)

or with a customer (e.g. mark-to-market accruals arising from the change in value of the position).

2.2 The majority of the respondents disagreed with this proposal. These respondents were of the view that (i) unrealized profits, which could easily turn to losses, should not be accounted for until they are crystallised, (ii) contractual rights are non-cash in nature, and (iii) there will be significant capital cost for brokers as they have to pre-fund customers' trust accounts for unrealised profits.

### MAS' Response

2.3 Taking into account the feedback received, MAS agrees not to proceed with the proposal. It is noted that other jurisdictions such as US, UK, Australia and Hong Kong similarly do not require brokers to pre-fund customers' unrealised profits in the trust account. MAS would like to clarify that where capital markets intermediaries receive moneys from other parties (e.g. the clearing house) in respect of the unrealised profits arising from customers' transactions or positions (e.g. in the case of futures contracts where it is a common industry practice for daily margining and settlement of moneys to occur between the broker and clearing house), such moneys are required to be kept in the trust account as they are received by the broker on account of customers. This is an existing requirement in the LCB Regulations.

### ***Due Diligence on Third Party Custodian***

2.4 MAS proposed to require capital markets intermediaries to conduct (i) due diligence on deposit-taking financial institutions prior to opening a trust account to deposit customers' moneys, and (ii) periodic reviews of the suitability of the deposit-taking financial institutions and custodians with whom they maintain the trust account and custody account to keep their customers' moneys and assets respectively. MAS also set out a list of factors that capital markets intermediaries should consider in conducting due diligence at the time of account opening and as part of the periodic reviews.

2.5 Majority of the respondents were supportive of the proposed requirements. Some respondents suggested that the requirements should not apply where the deposit-taking financial institution or custodian is an MAS-regulated entity, a related entity of the capital markets intermediary, a clearing house or an entity selected by the customer.

2.6 Respondents also sought guidance on the extent of the due diligence required (e.g. whether capital markets intermediaries can simply verify the regulatory status of a custodian or whether they need to seek legal advice on the statutory requirements that are applicable to the custodian), and the frequency of periodic reviews to be conducted. Several respondents asked whether a third party service provider or a related entity may

be engaged to perform the due diligence, and whether the proposals will apply retrospectively.

### MAS' Response

2.7 MAS agrees that the proposed requirements should not apply where the deposit-taking financial institution or custodian is (i) a clearing house which receives customers' moneys or assets as part of its clearing and trade settlement process, or (ii) an entity selected by customers who are institutional, accredited or expert investors ("non-retail customers") as these customers are typically sufficiently sophisticated or have access to professional resources to make a determination. Capital markets intermediaries will however be required to conduct due diligence and periodic reviews where the deposit-taking institution or custodian is an MAS-regulated entity or a related company of the capital markets intermediary. The regulatory status of the deposit-taking institution or custodian is one of the many factors which should be considered. Capital markets intermediaries should independently assess the credit quality and suitability of the deposit-taking institution or custodian, regardless of its regulatory status or its relation with the capital market intermediary.

2.8 MAS does not intend to stipulate the manner and frequency for which the due diligence should be conducted. Capital markets intermediaries may adopt a risk-based approach in determining the appropriate level of due diligence or the frequency of review. In making such determination, capital markets intermediaries should consider, among other things, the amount and proportion of customers' moneys or assets placed with a particular deposit-taking institution or custodian, the jurisdiction in which the entity resides and the financial strength of the entity. The approach for and the outcome of the review should be approved by senior management and properly documented for audit trail.

2.9 Capital markets intermediaries may engage a third party service provider or its related entity to conduct the due diligence. MAS Guidelines on Outsourcing will apply to such arrangements.

2.10 MAS would like to clarify that the due diligence requirements will not apply retrospectively. Capital markets intermediaries do not have to perform due diligence on their existing deposit-taking financial institutions and custodians when the requirements take effect but will have to carry out periodic reviews based on the frequency approved by senior management.

### ***Acknowledgement from Financial Institutions***

2.11 To provide greater protection for investors when they trade overseas, MAS proposed to extend the applicability of regulations 18 and 28<sup>2</sup> of the LCB Regulations by requiring capital markets intermediaries to obtain an acknowledgment from overseas financial institutions with whom they keep customers' moneys and assets.

2.12 Some respondents highlighted the potential challenges in obtaining such acknowledgements from overseas financial institutions. Firstly, the concept of "trust" may not be recognized in civil law jurisdictions. Secondly, overseas financial institutions are not bound by MAS' requirement to provide such acknowledgements.

2.13 Several respondents suggested that the requirement should not apply where the overseas financial institution is a related entity of the capital markets intermediary. Guidance was also sought on whether the requirements would apply retrospectively.

### **MAS' Response**

2.14 In view of the practical challenges and differing legal systems in other jurisdictions, MAS will modify the requirement such that the acknowledgment to be obtained from overseas financial institutions is not tied to the concept of trust. Accordingly, capital markets intermediaries will be required to obtain acknowledgement from the overseas financial institution stating that:

- (a) The customer's moneys and assets are segregated from the capital markets intermediary's own moneys and assets; and
- (b) The account used to hold the customer's moneys and assets is designated as a "customer's segregated account"; and
- (c) The overseas financial institution will not use the moneys and assets in the customer's segregated account to set off against debt owed by the capital markets intermediary to the overseas financial institution.

2.15 Although overseas financial institutions are not subject to MAS' requirements, MAS has observed that some capital markets intermediaries are already as a matter of

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<sup>2</sup> Regulations 18 and 28 of the LCB Regulations require capital markets intermediaries to obtain acknowledgement from domestic financial institutions with whom they keep customer's moneys and assets, confirming that (i) the accounts in which the customer's moneys and assets are deposited are designated as customer's trust accounts, (ii) the moneys and assets are held on trust for the customers and segregated from the intermediaries' own moneys and assets, and (iii) the domestic financial institution will not use the moneys and assets in those accounts to set-off against any debt owed by the intermediaries to the domestic financial institution.

practice requesting such acknowledgements from overseas financial institutions. The requirement to obtain acknowledgements from overseas financial institutions is not peculiar to Singapore. The US Commodity Futures Trading Commission and the UK Financial Conduct Authority also require their regulated intermediaries to obtain similar acknowledgements.

2.16 MAS would like to clarify that the requirement to obtain acknowledgement is applicable even where the overseas financial institution is a related entity of the capital markets intermediary.

### ***Information Requirement and Record Keeping***

2.17 MAS proposed to require capital markets intermediaries to maintain information systems and controls that can promptly produce, both in normal times and in the event of resolution or insolvency, and in a format understandable by an external party (such as a resolution authority or an administrator), information on the following:

- (a) the location of customer's moneys and assets, how the assets are held and the identity of all relevant depositories;
- (b) the type of segregation ("omnibus" or "individual") at all levels of holding chain and the effects of the segregation on customer's ownership rights;
- (c) the applicable customer's moneys and assets protection rules, particularly where customer's moneys and assets are held in a foreign jurisdiction;
- (d) outstanding loans of customer's securities arranged by the capital markets intermediary, including details of counterparties, contract terms and collateral received on behalf of the customer.

2.18 Many respondents commented that the proposed requirement is onerous and costly. They also highlighted that their immediate custodians may not have ready information with regards to subsequent intermediate linkages (e.g. between the sub-custodian and the local agent).

2.19 Respondents also sought clarity on the interpretation of "promptly produce", as it may take some time to retrieve and reproduce the information in an easily readable form.

### **MAS' Response**

2.20 MAS notes the feedback that capital markets intermediaries do not have ready access to information beyond the deposit-taking institution or custodian with which they

have contracted to deposit customers' moneys or assets. With regard to paragraph 2.17(a), it is already an existing requirement for capital markets intermediaries to maintain, for each customer, records of the amounts and description of each asset deposited in or withdrawn from the trust or custody account<sup>3</sup> maintained by the capital market intermediary. MAS will maintain the scope of the existing requirement. On paragraph 2.17(b), MAS also agrees that capital markets intermediaries may not have ready access to information about the type of segregation at all levels of a holding chain. As such, MAS will modify this requirement such that capital markets intermediaries will only be required to keep information about the type of segregation and the effects of the segregation on the customer's ownership rights in respect of the deposit-taking institutions or custodians with which the capital markets intermediaries have a direct contractual relationship.

2.21 MAS has also decided not to require capital markets intermediaries to maintain information on the applicable customer moneys or assets protection rules in paragraph 2.17(c). Nonetheless, capital markets intermediaries are expected to be familiar with the customer moneys or assets protection requirements of those foreign jurisdictions where their customers' moneys and assets are held.

2.22 MAS would also like to clarify that capital markets intermediaries should have in place information systems and controls that allow the relevant information to be retrieved as soon as practicable. For this reason, capital markets intermediaries should ensure that the information maintained is kept up-to-date.

### ***Disclosure to Customers***

2.23 To provide transparency to customers on the manner in which the capital markets intermediaries hold customer's moneys and assets and the attendant risks, MAS proposed to require capital markets intermediaries to disclose, in advance, to customers the following:

- (a) the manner in which the capital markets intermediaries hold customer's moneys and assets, including the type of segregation, the existence of any holding chain and the risks associated with the arrangements adopted;
- (b) where customer's moneys and assets are held in a foreign jurisdiction, the material differences between the client asset protection regimes in

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<sup>3</sup> Regulation 39(1)(e) of the LCB Regulations



Singapore and that jurisdiction, and the potential consequences of such differences.

2.24 A number of respondents commented that the proposed requirement is onerous and may impose a significant cost burden. To comply with the proposed requirement, capital markets intermediaries would need to engage local and overseas external counsel to advise on the material differences between the regimes in Singapore and a foreign jurisdiction and the ensuing implications. The disclosure provided to customers would also need to be updated periodically to reflect changes in the relevant regimes. Respondents also commented that customers may not be able to fully understand the disclosure given the degree of complexity of the differences in client asset protection regimes between jurisdictions.

2.25 One respondent sought clarification on whether a one-time blanket disclosure made upfront via the agreement governing the customer's account would suffice. A few other respondents also suggested that capital markets intermediaries should not be required to make such disclosures when dealing with related entities or non-retail investors.

### MAS' Response

2.26 As the arrangements adopted by capital markets intermediaries to hold customer's moneys and assets may affect the nature of claims which customers have over such moneys and assets, it is important that capital markets intermediaries inform customers the manner in which their moneys and assets are held and highlight to customers that there are material differences between the local and overseas customer moneys or assets protection regimes. Given these considerations, MAS will proceed with the proposed disclosure requirements.

2.27 MAS notes that some of the feedback might have arisen because respondents were unclear as to how the proposed requirements will operate in practice. In this regard, MAS would like to provide the following clarifications:

- (a) On the requirement in paragraph 2.23(a), capital markets intermediaries will be required to inform customers how their moneys or assets are held (e.g. on trust, individual segregation) with the deposit-taking institution or custodian contracted by the capital markets intermediaries. On the holding chain, it suffices for capital markets intermediaries to inform customers about the existence of a holding chain, for instance, if the customer trades on a foreign exchange, the capital market intermediary will pass the customer's moneys or assets to a foreign broker, which may in turn pass the moneys or assets to another broker(s), and that other broker will

execute the trade on the foreign exchange. Capital markets intermediaries should also highlight that as the customer's moneys or assets are passed to other entities along the holding chain, the manner in which the customer's moneys or assets are held by the different entities may be different.

- (b) On the requirement to disclose the attendant risks of the arrangement adopted, capital markets intermediaries should highlight to customers the key risks that they are exposed to. For instance, capital markets intermediaries should highlight the risk that the customers may not be able to fully recover their moneys or assets if the deposit-taking institution or custodian or other entities in the holding chain were to fail. In addition, where the customer's moneys and assets are held in an omnibus account, these moneys and assets are commingled with those of other customers in the same account, and the customer may be further exposed to losses of other customers.
- (c) In relation to the requirement to disclose the material differences between the local and foreign customer moneys/assets protection regimes in paragraph 2.23(b), capital markets intermediaries should highlight to customers that there may be material differences between these regimes, and that customers whose moneys and assets are held in a foreign jurisdiction may not enjoy the same level of protection as that accorded to moneys and assets that are held in Singapore. Capital markets intermediaries will not be required to enumerate on the specific differences between the local and foreign regimes and the consequences of such differences.

2.28 The requisite disclosures may be provided through a one-time disclosure made at the point of account opening via the agreement governing customers' accounts. MAS will not subject capital markets intermediaries to the proposed disclosure requirements when they deal with related entities or non-retail investors.

### ***Daily Computation of Trust Accounts and Custody Accounts***

2.29 To ensure that customer's moneys and assets are properly accounted for, MAS proposed to extend the daily computation requirement under Regulation 37 of the LCB Regulations to all capital markets intermediaries holding customer's moneys and assets. Currently, this requirement applies to only CMS licensees that trade in futures contracts and carry out leveraged foreign exchange trading.

2.30 A number of respondents expressed support for the proposal. Some respondents highlighted that the main challenge in performing such daily computations is the

availability of latest market valuation for the securities in question. They cited several examples where daily market valuation may not be available such as unit trusts that are valued on a monthly basis, overseas custodians which may not provide reports on a daily basis, and illiquid stocks for which daily valuation may not be available.

2.31 One respondent sought clarification on whether the daily computation may be performed on a group or consolidated basis.

### MAS' Response

2.32 MAS agrees that capital markets intermediaries' ability to conduct reconciliation and the frequency at which reconciliation can be conducted depend on the availability of valuation of the security or capital markets product concerned. Valuation of certain types of securities or capital market products, for instance units in collective investment schemes offered to non-retail investors, may not be available on a daily basis. MAS will modify the proposal such that capital markets intermediaries holding customers' moneys and assets (other than those trading in futures contracts or conducting leveraged foreign exchange trading) will be required to:

- (a) where customers' assets are custodised with a central securities depository and a daily valuation report is received from the central securities depositories, perform computation daily;
- (b) in any other case for customers' assets, perform computation monthly;
- (c) where the value of a security or capital market product is not available, perform reconciliation based on the outstanding position (e.g. number of units, number of lots in the security counter) in that security or product;
- (d) for customers' moneys, perform the computation daily.

2.33 Capital markets intermediaries that trade in futures contracts and carry out leveraged foreign exchange trading will continue to be subject to the existing daily computation requirement.

2.34 The computation should be performed for each entity. Computation performed on a group or consolidated basis (e.g. across different related entities within a group) is not sufficient to satisfy the proposed requirement, as such computation will not ensure the accuracy of each entity's records.

### ***Re-hypothecation and Other Use of Customer's Assets***

2.35 Most respondents were supportive of MAS' proposal to require capital markets intermediaries to provide risk disclosure to, and obtain consent from, their customers

prior to using the customers' assets, including mortgaging, charging, pledging or re-hypothecating the customers' assets.

2.36 Some respondents sought clarification on whether the proposed requirements will be applied retrospectively. There was also a suggestion that risk disclosure should not be required when capital markets intermediaries deal with accredited investors, institutional investors, expert investors, overseas government entities or the intermediaries' related entities.

2.37 A number of respondents asked whether MAS will provide a standard format for the risk disclosure to customers.

### MAS' Response

2.38 MAS will proceed with the proposal to require capital markets intermediaries to provide risk disclosure to, and obtain consent from, their customers prior to using the customers' assets, including mortgaging, charging, pledging or re-hypothecating the customers' assets. MAS notes that institutional investors<sup>4</sup>, expert investors and related entities of capital markets intermediaries should generally be more sophisticated. In addition, under the new regime for accredited investors<sup>5</sup>, investors who meet the prescribed wealth thresholds will have to make a conscious decision to opt-in to be treated as an accredited investor and in doing so accept the consequent reduction in regulatory protection afforded to them. As such, MAS has decided not to require capital markets intermediaries to comply with the proposed requirements when they deal with these classes of investors.

2.39 Capital markets intermediaries will be required to provide the risk disclosure and obtain customer's consent in respect of their existing customers (excluding customers who are institutional, expert or accredited investors, or related entities of the intermediary) whose assets are mortgaged, charged, re-hypothecated or otherwise used by the intermediary.

2.40 MAS does not intend to prescribe the form of risk disclosure but encourages industry associations to consider developing standard formats appropriate for their respective industries.

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<sup>4</sup> Under the Securities and Futures (Amendment) Bill 2017, the definition of institutional investors has been broadened to include central governments and central government agencies of foreign states.

<sup>5</sup> Refer to MAS' Response Paper (dated 22 September 2015) on [Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets](#)

### ***Statement of Account***

2.41 To enable customers to have timely access to information regarding their moneys and assets held by capital markets intermediaries, MAS proposed to require capital markets intermediaries to respond reasonably promptly to customers' request for statements of accounts. A majority of the respondents were supportive of MAS' proposal.

2.42 Some respondents sought clarification on (i) how the term 'reasonably promptly' should be interpreted, (ii) whether statements of accounts can be provided through electronic means, and (iii) whether MAS-licensed banks are required to provide statements of account and are subject to the proposal.

### **MAS' Response**

2.43 Capital markets intermediaries should respond to customers' request for statements of account as soon as practicable and inform customers of the expected turnaround time for such requests. Statements of account may be provided through electronic means. To allow customers of banks, merchant banks and finance companies to be informed regarding their moneys and assets held by the financial institutions, MAS had proposed in the consultation paper to extend the requirement to provide monthly statements of account and respond to customers' requests, to banks, merchant banks and finance companies which conduct regulated activities under the SFA. MAS will allow capital markets intermediaries to perform periodic reconciliations in lieu of furnishing statement of accounts to counterparties who are institutional investors because periodic reconciliations serve the same purpose as statements of accounts (i.e. to ensure that both parties have accurate records of and the same understanding on the trades executed or positions outstanding).

### ***Other Proposed Amendments to the LCB Regulations***

2.44 To protect retail customers who may not have applied their minds to, or fully appreciate, the implications of consenting to a clause in the account opening agreement that allows a capital market intermediary to deposit customer's moneys and assets in any account as determined by the intermediary, MAS proposed to dis-apply regulations 16(1)(b) and 26(2) of the LCB Regulations in the case of retail customers.

2.45 Several respondents commented that the dis-application is not needed. The respondents suggested that to mitigate the concern of capital markets intermediaries obtaining consent from customers via a clause embedded within account agreements, MAS could instead require capital markets intermediaries to obtain customer's specific or explicit consent.

2.46 One respondent requested that MAS consider classifying high-net worth individuals as non-retail investors, so that capital markets intermediaries may continue to avail themselves of regulations 16(1)(b) and 26(2) for such investors.

### MAS' Response

2.47 MAS does not consider that the suggestion for capital markets intermediaries to obtain specific or explicit consent from customers will adequately address the concern of retail investors not fully understanding the risks or implications of providing such consent. For instance, retail investors may not realise that if the account which is selected by the capital markets intermediary to deposit their moneys into is not a trust account maintained in accordance with the LCB Regulations, they will lose the protection afforded to their moneys under the LCB Regulations. Separately, MAS will modify the proposal to allow a retail customer to direct capital market intermediaries to deposit his moneys and assets in an account which is in that customer's name. This is to allow for instance the proceeds of the customer's trades or any excess moneys/assets which the customer has deposited with the capital market intermediary to be paid or returned to the customer.

2.48 MAS would also like to clarify that whether a high net worth individual is considered as retail or non-retail will depend on whether the individual meets the AI threshold and his own choice under the new AI regime<sup>6</sup>.

### ***Transitional Arrangements***

2.49 Several respondents requested an appropriate transition period to implement the proposals on recordkeeping requirement, and re-hypothecation and other use of customer's assets. On the recordkeeping requirement, the respondents commented that significant IT enhancements would be required.

### MAS' Response

2.50 This set of enhanced requirements on protection of customer's moneys/assets will be implemented by way of amendments to the LCB Regulations. MAS notes that other requirements (e.g. requirements on regulation of OTC intermediaries<sup>7</sup>, enhancements to the requirements for contracts for differences<sup>8</sup>) will also be incorporated into the LCB

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<sup>6</sup> Refer to MAS' Response Paper (dated 22 September 2015) on [Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets](#)

<sup>7</sup> Refer to MAS' Response Paper (dated 26 May 2017) on [Regulatory Framework for Intermediaries Dealing in OTC Derivative Contracts, Execution-Related Advice and Marketing of Collective Investment Scheme](#)

<sup>8</sup> Refer to MAS' Response Paper (dated 14 March 2014) on [Review of Regulatory Framework for Unlisted Margined Derivatives Offered to Retail Investors](#)

Regulations and other regulations under the SFA and Financial Advisers Act at the same time. Given the numerous new requirements that will be issued at the same time, and the feedback for an appropriate transitional period, MAS has decided to provide a two-year transitional period to comply with this set of enhanced requirements on protection of customer's moneys/assets. Existing capital markets intermediaries handling customers' moneys or assets will have two years from the effective date, estimated to be in early 2018, to prepare for compliance. Entities should thus have sufficient time to make the necessary system, process or documentation changes.

### **3 Application of the LCB Regulations to Banks, Merchant Banks and Finance Companies**

3.1 MAS proposed to dis-apply the requirements governing treatment and handling of customer's moneys for MAS-licensed banks, merchant banks and finance companies which conduct regulated activities under the SFA (collectively referred to as "exempt financial institutions" or "EFIs").

3.2 While the majority of the respondents were supportive of this proposal, a few respondents opined that the dis-application of the customer's moneys requirements would create an unlevel playing field between EFIs and CMS licensees conducting the same SFA-regulated activities. The respondents also commented that the dis-application could result in weaker protection of customer's moneys against an EFI's insolvency.

3.3 Some respondents also asked whether the dis-application of the customer's money's requirements would apply even if EFIs were made aware of a customer's intention for the moneys deposited to be used for capital markets investment purposes.

#### MAS' Response

3.4 Having carefully considered the feedback received, MAS will proceed with the proposal to dis-apply the customer's moneys requirements for EFIs. MAS considers the role performed by EFIs to be different to that by CMS licensees such as brokers. EFIs are deposit-taking institutions and take on a broader intermediation role, and are subject to regulations appropriate to the nature of their activities. CMS licensees, on the other hand, are regulated primarily for the risks arising from their capital markets activities. EFIs are in general subject to higher and more comprehensive regulation compared to CMS licensees. In addition, MAS notes that other major jurisdictions such as the United States, United Kingdom, Australia and Hong Kong also do not apply their customer's moneys requirements to banks that carry out capital markets activities.

3.5 MAS would also like to clarify that EFIs will not be subject to the customer's moneys requirements as long as the customer's moneys are maintained in an account in that customer's own name, regardless of the purpose of such moneys.

#### **4 Application of the LCB Regulations to Fund Management Companies**

4.1 Several respondents sought clarification on whether the customer's moneys and assets requirements under the LCB Regulations, including the proposals in this consultation paper, apply to CMS licensees conducting fund management ("fund management companies" or "FMCs"). They highlighted that the custodians, in the cases of authorised collective investment schemes ("CIS") and separately managed accounts ("SMA") are not appointed by the FMC.

##### MAS' Response

4.1 The existing requirements under the LCB Regulations and the proposals in this consultation paper would apply in a situation where a customer's trust or custody account is maintained by the FMC on behalf of a fund or fund management customer. These requirements/proposals are not applicable to the FMC if the customer's moneys or assets are held directly in an account in the customer's name with a bank or custodian (e.g. in the case of SMA) or where the custody accounts are set up in the name of the fund and held in the name of the trustee (e.g. in the case of CIS).

#### **MONETARY AUTHORITY OF SINGAPORE**

26 May 2017



**Annex A**

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON  
ENHANCEMENTS TO REGULATORY REQUIREMENTS ON  
PROTECTION OF CUSTOMER'S MONEYS AND ASSETS**

1. Association of Independent Asset Managers, Singapore
2. Baker & McKenzie. Wong & Leow
3. The Bank of New York Mellon, Singapore Branch
4. BNP Paribas Securities Services, Singapore Branch
5. Chan & Goh LLP
6. Citibank, N.A., Singapore Branch
7. Deutsche Bank
8. Duff & Phelps Corporation
9. Eastspring Investments (Singapore) Limited
10. Fidelity International
11. Futures Industry Association
12. iFAST Financial Pte Ltd
13. IG Asia Pte Ltd
14. ING Bank N.V., Singapore Branch
15. Investment Management Association of Singapore
16. Lymon Pte Ltd
17. Nomura Singapore
18. Securities Association of Singapore
19. SG Securities (Singapore) Pte. Ltd.
20. Shook Lin & Bok LLP
21. Sidley Austin LLP
22. State Street Bank and Trust Company
23. United Overseas Bank Limited

24. WongPartnership LLP
25. Respondent A who requested for confidentiality of identity
26. Respondent B who requested for confidentiality of identity
27. Respondent C who requested for confidentiality of identity
28. Respondent D who requested for confidentiality of identity
29. Respondent E who requested for confidentiality of identity and submission
30. Respondent F who requested for confidentiality of identity and submission
31. Respondent G who requested for confidentiality of identity and submission
32. Respondent H who requested for confidentiality of identity and submission
33. Respondent I who requested for confidentiality of identity and submission
34. Respondent J who requested for confidentiality of identity and submission

Please refer to Annex B for the submissions.

**FULL SUBMISSIONS FROM RESPONDENTS TO THE CONSULTATION  
 PAPER ON ENHANCEMENTS TO REGULATORY REQUIREMENTS ON  
 PROTECTION OF CUSTOMER'S MONEYS AND ASSETS**

*Note: The table below only includes submissions for which respondents did not request confidentiality.*

S/N	Respondent	Full Response from Respondent
1	Association of Independent Asset Managers, Singapore	<p><b>General comments:</b></p> <p>Independent/External Asset Managers (I/EAMs) do not hold/take custody of their clients' moneys and therefore would not even need to set up trust accounts to hold client's money unlike traditional fund management companies (where clients either directly invest into their fund or set up managed accounts). All I/EAM clients have bank accounts established in their own name with custodian/platform banks of their own choosing, and it is these banks that hold their bankable assets, not the I/EAM. Such clients will give I/EAM a mandate (either discretionary or advisory) to manage and advice on the moneys/assets in these respective bank accounts through a Limited Power of Attorney ("LPOA"). I/EAMs do not have authority to transfer or withdraw any assets out of these clients' accounts but have power to direct investments and liaise with the Bank on execution. Based on this I/EAM model, clients moneys and assets are already clearly segregated and not exposed to co-mingling with the I/EAM's own moneys and assets. As the account is in the client's own name, clients receive from their respective custodian/platform banks, all execution correspondences, trade advices and the monthly statement of investment holdings. As such, if the requirement to provide the same reporting is imposed on the I/EAM, it would be a duplication with no added value to the clients and unnecessary duplication of efforts and resources. Most I/EAMs are only licensed to provide investment services to accredited investors.</p>

		<p><b>Question 1:</b></p> <p>I/EAMs do not enter into any such contracts on behalf of the clients in or through I/EAM firm's name for the client. It is the clients who will enter such contracts directly with the Bank and I/EAM may only be the liaison to pass on such order for the client.</p> <p><b>Question 2:</b></p> <p>(e) As mentioned above, for clients of I/EAMs, the decision to choose which banks to hold their moneys and assets and perform execution of their investment activities lie with the clients themselves. I/EAMs are merely assisting the clients to process the on-boarding DDC and account opening requirements with the Bank. The accounts are held in the respective clients names directly. Regulations should highlight that due diligence is only required where the CMS' licensee opens a trust account to safe-keep its customer's moneys which had been entrusted directly to the I/EAM. Where the client opens the account in his own name and the CMS licensee manages the moneys in this account through the LPOA with no power to withdraw or transfer these assets (and assets in connected custody accounts), the I/EAM CMS licensee may assist the client to obtain information thus it is not our obligation to perform due diligence on the deposit-taking institution. This is superfluous because the deposit-taking financial institution is holding the moneys directly for the client.</p> <p>(f) See (a).</p> <p><b>Question 3:</b></p> <p>Regulations should highlight that acknowledgement is only required where the I/EAM CMS' licensee opens a trust account to safe-keep its customer's moneys and assets. Where the client opens the account in his own name and the licensee manages the moneys and assets in the respective account through the empowerment of LPOA, the licensee <u>should not need</u> to obtain acknowledgement that the moneys or assets are held on trust (because they are not held by the I/EAM in the first place) as it is not a correct representation of the working structure. The depository or custodian institution is holding the moneys or assets segregated for the specific customer already.</p>
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		<p>IAMs manage the assets and moneys of HNWI through client's given Limited Power Of Attorney ("LPOA"). The depository and custody accounts are held in the name of the customer, the HNWI, with a respective licensed financial institution. In some cases, we know that independent auditors have repeatedly requested some I/EAMs to conduct due diligence and obtain trust acknowledgements from the custodian for these accounts. Since the depository or custodian financial institution is holding the moneys directly in the client's name and not in the name of the I/EAM and the client receives directly all the Bank statements showing their investment and cash holdings, requesting I/EAMs to approach the Bank to re-iterate such information is a redundant exercise without added merits.</p> <p>In the event that the I/EAM is actually holding client's moneys in trust, then obtaining the acknowledgement from either the local or overseas financial institutions is a prudent act .</p> <p>We still maintain that if the I/EAM does not take custody of the client's moneys and assets, this requirement should not be imposed. However, if MAS sees that there is value in getting this information from each of the client's respective custodian/platform banks even for accounts which are held in the client's own names, I/EAM licencees will have to comply and it is just another layer of duplication of resources and efforts for all parties concerned.</p> <p><b>Question 4:</b></p> <p>I/EAM licencees do not hold clients moneys and assets. I/EAMs do produce added value reports which are based on the data that is provided by the bank/platform that actually holds the moneys and assets thus it should not be in scope for this requirement. However, this is important for those custodian/platform banks as well as those other licencees that will hold customer's money in trust accounts. This should ensure necessary controls to facilitate the efficient recovery in case of insolvency.</p> <p><b>Question 5:</b></p> <p>Regulations should highlight/make clear that the proposed reporting is only required where the CMS' licensee opens a trust account to safe-keep its customer's moneys and assets.</p>
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		<p>assets to be allowed, the client would have had to establish such arrangements directly with the bank. In case of margin call or closure of portfolio assets to set off debts owed to the Bank, it is only the Bank that has the legal and contractual right to exercise such action and not the the I/EAM.</p> <p>(b) I/EAMs have no power to transfer/withdraw customers' monies and no power to engage securities lending thus this should not be applicable to I/EAMs. Should any clients wish to lend their financial securities to the Banks, they have to enter the contract directly and undertake the risk associated with it, the Bank is responsible for explaining the risks to the clients. However, we welcome MAS approach to keeping a lean/efficient structure in customer documentation. If the I/EAM has the power to do any of the above, allowing such a clause/consent to be embedded in the contract makes sense.</p> <p><b>Question 8:</b></p> <p>Regulations should highlight that the proposed reporting is only required where the CMS' licensee holds customer's moneys and assets on trust for the client(s). Where the client opens the account in his own name and the CMS licensee manages the moneys and assets in the respective account, the I/EAM CMS licensee must not be required to perform such reporting as they do not have the data and the system to present such information. Rather the reporting by the custodian and depository institutions must suffice. The depository or custodian institution is holding the moneys or assets for the specific customer. Their reporting must be sufficient and it is the practice that if clients of I/EAMs request for such information, I/EAMs will approach the respective platform/custodian bank to provide timely. What normally I/EAMs will provide to their clients is a portfolio performance report using the data (bank statements) from the custodian/platform bank where the client's account is directly held to compute such report.</p> <p><b>Question 9:</b></p> <p>I/EAMs only licensed to provide services to Accredited Investors, but we repeat that we do not take custody of clients moneys in the first place.</p>
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		<p><b>Question 10:</b></p> <p>These questions are related primarily to custodian/platform banks which I/EAMs are not thus we have no further comment/input on these points.</p>
2	Baker & McKenzie. Wong & Leow	<p><b>Question 2:</b></p> <p>Could MAS please provide guidance on the following:</p> <ol style="list-style-type: none"> <li>1. How often CMS licensees should conduct periodic reviews? E.g. 5 years or upon the occurrence of a trigger event (e.g. where the deposit-taking financial institution and custodian ceases to hold a licence/authorisation)?</li> <li>2. In view of paragraph 3.7(a) and (c) of the Consultation Paper, please advise what is required, i.e. is a letter from the third party deposit-taking financial institution or custodian coupled with verification of their licensing/regulatory status sufficient or are CMS licensees expected to obtain legal advice on the legal requirements and market practices relating to the holding of the customer's moneys and assets that could affect the customer's rights during business as usual and in the event of default or resolution of the third party deposit-taking financial institution or custodian.</li> <li>3. Would the same standard of due diligence be expected for both local and overseas third party deposit-taking institutions or custodians?</li> <li>4. We query whether the requirement in paragraph 3.7(d) is necessary. Provided that that the CMS licensee conducts due diligence and exercises care in selecting the sub-custodian, it may be operationally inefficient for the CMS licensee to be required to further consider splitting the moneys and assets of its customers equally amongst two or more sub-custodians in a particular jurisdiction.</li> </ol> <p>If this requirement is to be retained, we suggest that this be considered in the light of the scale, nature and complexity of the business / operations of the CMS licensee.</p> <p><b>Question 3:</b></p>



		<p>We support this proposal.</p> <p><b>Question 4:</b></p> <p>In relation to paragraph 3.12 of the Consultation Paper, please provide guidance on:</p> <ol style="list-style-type: none"><li>1. Whether the CMS licensee is expected to identify and keep records of all applicable customer moneys and assets protection rules in foreign jurisdictions and the items set out in paragraph 3.12 (a) and (c) of the Consultation Paper for all levels of the holding chain.</li><li>2. What are the expectations for the requirement to be able to "promptly produce" the information? How does this compare to the "reasonably promptly" standard proposed for the time to respond to customers requesting for their statement of accounts under paragraph 3.21 of the Consultation Paper.</li><li>3. We welcome guidance on the range of timelines expected and where applicable for a distinction be made in this regard depending on the type of asset.</li></ol> <p><b>Question 5:</b></p> <ol style="list-style-type: none"><li>1. Please confirm that the advance disclosure proposed under paragraph 3.14 of the Consultation Paper may be done by way of inclusion in the terms of the account agreement in line with the risk disclosure suggested in paragraph 3.19 of the Consultation Paper.</li><li>2. To ensure that the customers receive adequate disclosure, we welcome a standard form disclosure provided by the MAS rather than have multiple disclosures individually drafted by the various CMS licensees.</li><li>3. We had the following comments in relation to the requirement in paragraph 3.14(b) for CMS licensees to disclose "where the customer's moneys and assets are held in a foreign jurisdiction, the material differences between the customer's moneys and asset protection regimes in Singapore and that jurisdiction, and the potential consequences of such differences":</li></ol>
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		<ol style="list-style-type: none"> <li>1. This may be quite onerous particularly if the CMS licensee is providing execution or settlement only services or where the customer is an institutional, accredited or expert investor who have made the independent choice to trade on markets outside their home jurisdictions. These clients should reach out to their legal advisers to consider and advise them on the material differences between the various customer moneys and asset protection regimes as well as the potential consequences of such differences rather than the CMS licensee. The CMS licensee's role in such case should be limited to making the appropriate arrangements with the sub-custodian in the relevant jurisdiction to hold the customer's assets rather than providing such advice.</li> <li>2. If this requirement is retained, we suggest making a distinction between retail customers as opposed to institutional, accredited or expert investors.</li> </ol> <p><b>Question 7:</b></p> <ol style="list-style-type: none"> <li>1. To ensure that the customers receive adequate disclosure, we welcome a standard form disclosure provided by the MAS rather than have multiple disclosures individually drafted by the various CMS licensees.</li> <li>2. We assume that acceptance of the CMS licensee's standard terms (which include the relevant risk disclosure) would be considered to informed consent. Please confirm CMS licensees need not offer a opt-out clause.</li> </ol> <p><b>Question 8:</b></p> <p>Please provide guidance on what MAS expects with the term "reasonably promptly" as opposed to "promptly" in relation to the information keeping requirement under paragraph 3.12 of the Consultation Paper.</p> <p><b>Question 9:</b></p> <ol style="list-style-type: none"> <li>1. In practice, there may be cases where customers' moneys and assets are deposited in non-trust or custody account for a temporary period before being transferred from one trust/custody account to another trust/custody account.</li> </ol>
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		<p>This is for the purpose of transaction processing and to facilitate the reconciliation and allocation of the moneys to our respective customers. Given these operational issues, we propose that the regulations should provide for exemptions where customers' moneys and assets may be placed in non-trust/ custody account if it is on a temporary basis.</p> <ol style="list-style-type: none"> <li>2. It appears that to the extent that customers' moneys and assets are held in an account opened in the name of the customer, the intermediary will not be regarded to be holding customer's money or assets (and therefore Part III of the Securities and Futures (Licensing and Conduct of Business) Regulations ("SFR") doesn't apply), even if the intermediary or its representatives have authorisation to operate the account. It would be helpful to clarify if this is indeed the case.</li> <li>3. It is noted that the proposal to disapply Regulation 16(1)(b) and 26(2) does not apply in the case of non-retail investors. For non-retail investors, may we suggest streamlining the provisions in Part III of the SFR, in order to clarify if the provisions in Part III still apply where customer's moneys and assets are held in an account directed by the customer instead. At present, there appears to be a few ambiguities. For example, where money is deposited in an account directed by the customer pursuant to regulation 16(1)(b), the remaining requirements in Part III, Division 2 of the SFR should not apply. While this is clearly implied from certain provisions (e.g. regulation 18 which is limited to circumstances where the trust account is opened with a specified financial institution), it is less clear in the remaining provisions in Part III, Division 2 of the SFR. Similar issues arise with respect to the provisions in Part III, Division 3, as it relates to customers' money.</li> <li>4. It would also be helpful to clarify that for institutional, accredited and expert investors, consent via a clause in the account agreement as discussed in paragraph 3.23 of the Consultation Paper (via a clause in the account agreement) would be acceptable.</li> <li>5. We note that it is not MAS policy intent for financial institutions to place customers' moneys / accounts in any account determined by the financial institutions even if the customer has consented to it. It would be helpful to</li> </ol>
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		<p>confirm if it is acceptable as long as an institution places a non-retail customers' moneys and assets in an account directed / specified by the customer, regardless of how the nature and type of account (i.e. whether held in the name of the customer or otherwise, and whether it is a trust account or otherwise).</p> <p>6. For retail customers, please clarify if it would be acceptable for them to be provided with a checkbox at the signature page of the account agreement (and not embedded in the terms and conditions), which they would have to tick if they wish to opt-out. If not, please clarify what is required to establish that they selected to opt-out of the relevant protections.</p> <p><b>Question 10:</b></p> <p>We are supportive of this proposal as it addresses the commercial considerations of EFIs.</p> <p>Similar to EFIs, we think it should also be clarified that CMS licence holders who place customers' moneys with a licensed bank in the name of the customer would also not be subject to the LCB Money Rules. There should be no distinction between a CMS licence holder and an EFI.</p> <p><b>Others</b></p> <p>As a general comment, it would be helpful to clarify the interaction between regulations 17, 27 and regulation 13B of the SFR. Regulation 13B relates to the custody of customers' moneys and assets as well.</p> <p>For fund managers, moneys of the fund or the client are usually placed with a bank or prime broker in the name of the fund or the client. It appears that the moneys will not be subject to Part III, Division 2 on the basis that the fund manager is not regarded as holding customers' moneys. Assuming this is correct, Regulation 13B however requires the moneys to be held in a trust account. It would be helpful to clarify if this is indeed the intention. If so, we urge MAS to reconsider this requirement under Regulation 13B as it relates to moneys as typically, such moneys are held in bank accounts in the name of the fund or the client, and such accounts may not be trust accounts.</p>
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3	The Bank of New York Mellon Singapore Branch	<p><b>General comments:</b></p> <p>As BNY Mellon Singapore Branch is an EFI, we have assumed that the MAS will dis-apply the LCB Money Rules to EFIs and have therefore provided the comments below from the perspective of the proposed enhancements being extended to EFIs in respect of customer's assets only.</p> <p><b>Question 2:</b></p> <p>As BNY Mellon Singapore Branch is an EFI, proposed enhancements relating to Customer's Moneys will not be applicable by reading of Section 4 of the Consultation Paper. We would like MAS to confirm that since this refers to deposit-taking financial institution and customer's moneys that this will not be extended to EFIs by virtue of the proposal in Question 10.</p> <p>However, we would like to seek clarification for the perspective of our clients who may be CMS licensees on the following:</p> <ul style="list-style-type: none"> <li>(A) The suitability criteria for CMS licensees to assess whether the deposit-taking financial institutions and custodians with whom licensees maintain customer's trust accounts and custody accounts, including but not limited to, whether the standard is an objective or subjective one;</li> <li>(B) The level of due diligence required to be conducted by the CMS licensees; and</li> <li>(C) The frequency of periodic reassessment that is proposed to be required.</li> </ul> <p><b>Question 3:</b></p> <ul style="list-style-type: none"> <li>(A) We would like MAS to clarify the approach for jurisdictions in which trust concepts are not recognised (e.g. where we deposit client moneys or assets in a jurisdiction which does not recognise trusts – usually civil law jurisdictions).</li> <li>(B) From the perspective of our Head Office, who is the Global Custodian, such acknowledgements are generally not issued as it is subject to its own applicable rules (if any)</li> </ul>

		<p>relating to the holding of customer's moneys and assets which do not contain the same requirements under Regulations 18 and 28. In some circumstances, the applicable foreign rules may even contradict Regulations 18 and 28. For example, trust may not be a recognised concept in the jurisdiction of the overseas financial institution (see comment (A) above). We also note that it is customary for clearing systems, custodians and sub-custodians to have a right of set-off or retention over a customer's money and assets. The MAS may wish to consider whether a confirmation from an overseas financial institution as to segregation of those moneys and assets alone would be sufficient.</p> <p><b>Question 4:</b></p> <p>(A) MAS to clarify the time-frame envisaged by the language "promptly".</p> <p>(B) In respect of (c), as resolution or insolvency regime of foreign jurisdiction may change from time to time, it would not be practicable to upkeep customer's moneys and assets rules to the frequency that it becomes promptly producible. We propose to add that there be set periodic review (i.e. 6 months) of the new record keeping requirement of (i) applicable customer's moneys and assets protection rules, and (ii) resolution and insolvency regime the relevant foreign jurisdiction.</p> <p><b>Question 5:</b></p> <p>(A) MAS to clarify the time-frame of 'advance disclosure'. Will such advance disclosure be applicable to 'potential' clients?</p> <p>(B) We do not think that it would be appropriate for custodians to provide detailed legal and investment advice such as (i) material differences between customer's moneys and asset protection regimes in Singapore and a foreign jurisdiction (if that is contemplated) and (ii) the potential consequences of those differences – for example, our head office, as the global custodian, has been requested by institutional clients to hold securities in emerging markets and we do so based on such instructions (within our capabilities). As custodian, while we can give a general disclosure to clients informing them that there</p>
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		<p>may be differences between the customer's moneys and asset protection regimes between jurisdictions, we are of the view that clients should make such decisions following tailored and careful independent legal and investment advice as to the framework of these markets.</p> <p><b>Question 6:</b></p> <p>Daily computation of interests generally applies to holding of moneys, but this is not the case for holding of customer's assets. We would like to confirm that in the case of holding of securities, this enhancement will not apply.</p> <p><b>Question 10:</b></p> <p>We would like to clarify if rules to Customer's Assets will apply to global custodians who provide custody services through Singapore EFIs which are branch of the global custodians.</p> <p>As an extension to above question, where custody services are provided in addition to dealing in securities, we would like to clarify if rules in paragraphs 3.4 to 3.23 in respect of customer's moneys and assets be applicable to the foreign entity that provides such services in Singapore through Singapore licensed Capital Markets Intermediaries through Paragraph 9 approvals.</p>
4	BNP Paribas Securities Services Singapore Branch	<p><b>Question 2:</b></p> <p>We wish to clarify if the due diligence could be outsourced to a third party provider</p> <p><b>Question 3:</b></p> <p>We wish to clarify if it is sufficient to segregate assets at the agent level or all the way to the depository level.</p>
5	Chan & Goh LLP	<p><b>Question 5:</b></p> <p>Currently, paragraph 12 of the Third Schedule of the Securities and Futures (Offer of Investments) (Collective Investment Schemes) Regulations 2005 (the "<b>SFR Regulations</b>") prescribes the information to be disclosed relating to the trustee or the custodian in the Prospectus. The information required is minimal and includes the name of the trustee and/or custodian and its/their regulatory status.</p>

		<p>Please clarify if the disclosure requirements as set out in paragraph 3.14 and 3.15 will similarly apply to the SFR Regulations such that a prospectus will now have to include the additional information such as (i) the type of segregation, (ii) the risks associated with such arrangements and (iii) where customer's moneys and assets are held in foreign jurisdiction, the material differences between the customer's moneys and asset protection regimes in Singapore and that jurisdiction, and the potential consequences of such differences.</p> <p>It should be noted that funds with multi-jurisdictional investment strategy will generally appoint a global custodian to provide custodial services. Such custodian will be entitled to appoint sub-custodians to perform any of its duties in specific jurisdictions where the fund invests its assets.</p> <p>If the disclosure requirements in paragraphs 3.14 and 3.15 apply to the prospectus, please consider modifying and/or waiving the requirements, including the need to list out the material differences between the customer's moneys and asset protection regimes in Singapore and all other jurisdictions as this will make the prospectus lengthy and less reader friendly, especially where the number of sub-custodians appointed in various jurisdictions is sizeable. This would also increase the time and cost needed to prepare/update each prospectus as the managers would need to verify the status of the customer's moneys and asset protection regimes in each jurisdiction.</p> <p><b>Question 6:</b></p> <p><u>Frequency of valuation for Units of a Collective Investment Scheme</u></p> <p>The valuation requirements for units of a collective investment scheme (the "Scheme") under the Securities and Futures Act (the "SFA") are already set out in paragraph 6.4(j) of the Code on Collective Investment Schemes (the "Code"). Generally, Units in a Scheme are valued daily where the Scheme offers dealing every business day. Otherwise, the Scheme is valued every regular dealing day (which, under the Code, must be at least once a month). Where the Scheme is a property fund, the Scheme is valued at least once a year.</p> <p><u>Frequency of valuation for Units/Shares of a fund</u></p>
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		<p>A CMS licence holder for fund management may also establish funds that fall outside the scope of the Code (i.e. funds that are not authorised under section 286, SFA) for accredited investors (Section 305, SFA) or pursuant to exemptions under the SFA for example, private placement (section 302B, SFA) or small offers (Section 302C, SFA) exemption (the “Funds”). The dealing day and valuation for such Funds are not regulated and may differ. For example, a fund may have a lock-in period of two years with quarterly valuation. By extending the daily computation requirement under Regulation 37 of the LCB Regulations to CMS licensees holding the investors’ moneys and assets, this will unduly increase the cost of establishing/running the Fund given the need for daily computation and would not be feasible nor necessary particularly in the context of a Fund which may not offer daily dealings of its Units/Shares.</p> <p><u>Proposal</u> Based on the above, we propose that CMS licence holders for fund management be excluded from Regulation 37 of the LCB Regulations.</p> <p><b>Question 9:</b></p> <p>Please clarify if the intent to dis-apply Regulations 16(1)(b) and 26(2) is to prohibit CMS licensee from using their account opening agreement or its associated terms and conditions to direct retail customers to choose a “non-trust” account into which customers’ monies and assets are deposited. If a customer elects his own trust account into which he would like the monies/assets managed by the CMS licensee to be deposited, why would this be an issue?</p> <p>We assume the obligation to place customers’ monies and assets in a trust and custody account remains in view of Regulations 16(2) and Regulations 26(1)(a). Similarly we assume that only the phrase “or deposited in an account directed by the customer or” in Regulation 16(2) is intended to be removed.</p>
6	Citibank, N.A., Singapore Branch	<p><b>Question 1:</b></p> <p>While we appreciate the MAS’s objective in seeking to include contractual rights under its customer money and asset protection regime to align with IOSCO’s <i>Final Report: Recommendations Regarding the Protection of Client Assets</i></p>

		<p>(“<b>IOSCO Recommendations</b>”), we have concerns about the approach of expanding the current definition of ‘customer’s moneys’ in the <i>Securities and Futures (Licensing and Conduct of Business) Regulations</i> (“<b>LCB Regulations</b>”) to include this. The IOSCO Recommendations do not treat contractual rights as a customer’s moneys, but rather as a separate category of ‘client positions’ which is itself a subcategory of ‘client assets’. We understand that the MAS seeks to include this under ‘customer’s moneys’ on the basis that mark-to-market accruals and other contractual rights owed by the CMS licensee to the customer are typically met with cash instead of assets. However, while cash may be used to settle such positions, the positions themselves are non-cash assets and do not readily lend themselves to the types of protections applicable to a client money regime. For example, contractual rights are not something that can be placed in a trust account or deposited with a clearing house or exchange. As a practical matter, we believe positions held with most central counterparties settle daily, after which actual cash, to the extent that gain is realised on a position, would be subject to applicable client money protections without the need for any definitional changes. As such, we request that the MAS reconsider the necessity of adding contractual rights to the definition of ‘customer’s moneys’.</p> <p><b>Question 2:</b></p> <p>We support the MAS’s desire to ensure that CMS licensees exercise due care and diligence in the selection of deposit-taking financial institutions and custodians. To clarify what this would entail, we request that the MAS provide guidance on the steps a CMS licensee should take to comply with such requirements, as well as guidance on the timing of periodic reviews. We also request that the MAS consider providing a number of exemptions to this requirement in situations where separate due diligence may be unnecessary. One such situation would be where the relevant institution is part of the same corporate group as the CMS licensee as we believe there is little benefit to the CMS licensee performing due diligence on affiliates with which it should already be familiar. We further request the MAS consider an exemption where the institution is authorised and regulated by the MAS or by a regulator in a comparable jurisdiction where the MAS has a memorandum of understanding with the foreign regulator.</p>
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		<p><b>Question 3:</b></p> <p>We support the extension of applicability of Regulations 18 and 28 under the LCB Regulations to situations where customers' moneys and assets are placed with overseas financial institutions. However, we would be grateful if the MAS could clarify if the extension of the applicability of Regulation 28 (but not Regulation 18 in view of the proposed dis-application of the LCB Money Rules to EFIs) under the LCB Regulations to situations where customers' moneys and assets are placed with overseas financial institutions would include a situation where an EFI, as a global custodian based in Singapore, holds customers' moneys and assets through overseas sub-custodians, particularly where the overseas sub-custodians are affiliates of the said EFI.</p> <p><b>Question 4:</b></p> <p>While we support the proposal to require CMS licensees to maintain information systems and controls that can promptly produce, both in normal times and in the event of resolution or insolvency, salient information pertaining to their customer's moneys and assets, for implementation purposes and to better understand the impact on our business, we would be grateful if the MAS could clarify the full scope of the requirements (in particular, if the "the type of segregation ... at all levels of a holding chain" would include information at the central securities depository level) so that we may assess any systems development requirements and their associated build times and costs, which may be significant.</p> <p><b>Question 5:</b></p> <p>We understand that the MAS seeks to introduce a requirement for CMS Licensees to provide customer disclosures setting out:</p> <ul style="list-style-type: none"> <li>▪ The manner in which CMS licensees hold the customer's moneys and assets, including the type of segregation and the existence of any holding chain and the risks associated with the arrangements adopted by the CMS licensee;</li> <li>▪ Where the customer's moneys are held in a foreign jurisdiction, the material differences between the customer's money and asset protection regimes in Singapore and that jurisdiction, and the potential consequences of such differences.</li> </ul>
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		<p>While we support providing customers with adequate disclosure, we have concerns over the requirements to identify differences between foreign customer protection regimes and the Singapore regime and to outline the potential consequences of such differences. We believe such requirements will result in onerous compliance burdens. As such, we request the MAS to consider limiting this to retail customers and instead requiring a disclosure identifying that the protection regime in a foreign jurisdiction may be different from that of Singapore and that, in some cases, protection may not be available and may result in an unsecured claim. We would be grateful if the MAS could clarify if the requirements will apply solely to new customers or also to existing customers. If the latter, then we seek additional clarification on how such process is to be implemented. Would the MAS provide standard language to address this requirement? If not, would the MAS be amendable to an industry-standard disclosure?</p> <p><b>Question 6:</b></p> <p>We support this proposal.</p> <p><b>Question 7:</b></p> <p>We support this proposal but we would be grateful if the MAS could clarify if the requirements will apply solely to new customers or also to existing customers. Would an affirmative consent be required or would negative consent be sufficient? If the requirement is to apply to all customers, then we seek additional clarification on how such process is to be implemented. Would the MAS provide standard language to address this requirement? If not, would the MAS be amendable to an industry-standard disclosure?</p> <p><b>Question 8:</b></p> <p>We support this proposal.</p> <p><b>Question 9:</b></p> <p>We support this proposal to dis-apply these conditions for retail customers.</p>
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		<p><b>Question 10:</b></p> <p>We support this proposal to dis-apply the LCB Money Rules to EFIs and agree that EFIs ought continue to be subject to the LCB Asset Rules. However, we respectfully submit that the proposed enhancements in paragraphs 3.4 to 3.23 should be extended to EFIs in respect of customer's assets only to the extent of those proposed enhancements which relate to regulations that currently apply to EFIs pursuant to Regulation 54(1) of the LCB Regulations.</p>
7	Deutsche Bank	<p><b>General comments:</b></p> <p>DB supports efforts to align the Singapore client asset protection regime with international standards. However, we request additional clarification in the following areas:</p> <ul style="list-style-type: none"> <li>▪ While we broadly support the definition of customer's assets proposed, as it is based on the global Financial Stability Board (FSB) one, we suggest refining it further to clarify what is not in scope as well as what is in scope, and reconsidering reference to other contractual rights in light of the specific circumstances under the Singapore legal and regulatory regime;</li> <li>▪ We ask the MAS to revise the proposal to disclose material differences between asset protection regimes in Singapore and individual foreign asset protection regimes. Unless done in a standardised format, such a requirement could be very complex and costly to meet and would outweigh the intended regulatory benefits;</li> <li>▪ Finally, we request specific considerations in relation to the new due diligence requirements for the selection and appointment of deposit-taking financial institutions and to the proposal to extend the requisite acknowledgement to overseas financial institutions.</li> </ul> <p><b>Question 1:</b></p> <p>DB supports the proposal to expand the definition of customer moneys in line with international standards. The proposed MAS definition of what is in scope is broadly aligned with the Financial Stability Board's (FSB) definition of client assets , except for paragraph 3.1(d) of the consultation paper, where</p>

		<p>the FSB specifies “assets and other (contractual) rights”. As currently drafted, the reference in the definition to “contractual rights arising from transactions entered into by the CMS licensee with a customer” could be interpreted very broadly. This could have adverse unintended consequences unless the definition is also clear about what is not included.</p> <p>For example, in the context of futures and options trading, the validity and enforceability of close-out netting could be affected. If a CMS licensee is facing a defaulting customer but at the same time holding the customer’s rights on trust for the customer, the CMS licensee may lose its ability to effectively close out its exposures against the defaulting customer on a net basis.</p> <p>We also note that market standard documentation for futures and options trading typically states that the CMS licensee trades as principal with the customer (the CMS licensee then proceeds to enter into back-to-back trades with the relevant exchange, again on a principal-to-principal basis). Thus the CMS licensee does not actually enter into contracts on behalf of a customer for futures contracts. It would be useful if MAS could expressly clarify that this definition of customer’s moneys does not apply to situations where a financial institution enters into a contract with a client and then enters into a back to back trade with an exchange/CCP.</p> <p>As such, to ensure international consistency, we suggest that the MAS proposed definition of customer moneys be aligned with the Financial Stability Board’s definition and also list client assets which are not considered customer moneys (i.e. entirely excluded). This includes deposits held by banks, assets held by an insurer, and assets delivered in a full title transfer transaction, such as securities lending transactions, repurchase or reverse repurchase agreements, where neither the client nor clients collectively retain proprietary or similar rights to the assets. It should also specify that the definition of client assets is subject to any right of the firm to those assets as collateral (e.g. netting or set-off).</p> <p>It should also generally be noted that the FSB’s definition is necessarily quite broad, given variation in market structures and legal and regulatory regimes. We therefore request that the MAS consider how to refine and adapt the FSB’s definition in light of the existing Singapore legal framework and provide</p>
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		<p>greater clarity on what kind of assets and rights are covered and in what circumstances.</p> <p><b>Question 2:</b></p> <p>DB supports the policy objective to ensure due diligence, where appropriate, for the selection and appointment of deposit-taking financial institutions and custodians. However, it would be helpful if the MAS could confirm our understanding of the following:</p> <ul style="list-style-type: none"> <li>▪ Where the CMS licensee (or Exempt Financial Institution) maintains customer's trust and custody accounts with itself or one of its own affiliates or branches, the CMS licensee (or Exempt Financial Institution) should not be required to perform due diligence or periodic reviews on itself, or as the case may be, its own affiliate or branch.</li> <li>▪ Clarification as to whether the assessment of deposit-taking financial institutions and custodians may be done on a global level, i.e. whether a CMS licensee may rely on the assessment carried out by the CMS licensee's group.</li> <li>▪ Clarification that custodians/sub-custodians which safe-keep moneys for customers in non-interest bearing cash accounts, are not to be regarded as deposit-taking institutions (for the purpose of the requirements for due diligence and periodic reviews). Otherwise, a CMS licensee holder may need to use different custodians for safe-keeping of customers' moneys and assets (which would operationally be cumbersome and riskier). In general, custodians/sub-custodians do not provide services for safe-keeping of moneys only (instead they safe-keep money only in connection with the customer's securities transactions – for example, where they have received the sale proceeds resulting from the customer's sale of securities).</li> <li>▪ That CMS license holders/master custodians are not required to conduct due diligence on domestic central securities depositories in offshore markets, or international central securities depositories such as Clearstream or Euroclear, prior to utilising such securities depositories. In most markets, there are very few or no alternatives. For example, for Singapore-listed equities, there is only one central securities depository (CDP) and a</li> </ul>
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		<p>CMS licensee cannot conduct any business relating to Singapore equities if it does not utilise CDP.</p> <ul style="list-style-type: none"> <li>▪ We note that periodic reviews are in line with current market practice, but ask the MAS to confirm our understanding that the frequency of the periodic reviews will be up to the CMS licensee.</li> </ul> <p><b>Question 3:</b></p> <p>We do not believe it will be feasible in practice to extend the requirement to obtain an acknowledgement from overseas financial institutions, unless the proposals are adapted. This is because overseas financial institutions generally do not offer trust structures as part of their custodial services and thus they are unable to provide such an acknowledgement pursuant to paragraph 3.8(ii) of the consultation paper. As such, a requirement that a CMS licensee must obtain an acknowledgment from overseas financial institutions is likely to jeopardise CMS licensee’s access to services offered by globally known and reputable international custodians. The law of trusts is highly complex and varies from jurisdiction to jurisdiction (some jurisdictions do not even have the legal concept of “trusts”). Thus trust structures are not necessarily available nor, if available, necessarily viable in all jurisdictions where customer’s moneys may need to be held. The requirement for “trust accounts” would add little benefit (and could be potentially inconsistent with) laws and regulations in offshore markets which already recognise the beneficial ownership of investors in the relevant assets.</p> <p>In respect of paragraph 3.8(iii) of the consultation paper, it is market practice for offshore sub-custodians to provide intraday credit lines to a master custodian, for settlement of its customers’ buy trades, on the basis of a lien (right to retain) over the securities which are the subject of the buy trades. The trust account and no set-off requirements would supersede the lien, and is likely to result in offshore sub-custodians not being able to provide intraday credit lines to a master custodian in Singapore. Customers would therefore have to pre-fund their buy trades, and time zone differences/funding cut-off times may cause the customers’ funds to be exposed to overnight risk with the offshore sub-custodian. As a matter of commercial reality, and for valid business reasons, it is very unlikely that sub-custodians would be willing to give up their lien and expose themselves to their customers’ credit risk.</p>
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		<p>In respect of Regulations 25 and 27, if the definition of “custodian” in Regulation 25(1) and Regulation 27 will be amended in connection with this proposal, it would be helpful if the MAS could clarify that domestic central securities depositories and international central securities depositories in offshore markets are excluded. These entities are required to be utilised by custodians where customers are investing in the relevant offshore markets, and there are no alternate options. Further, it is not likely that the LCB Asset Rules can be satisfied when custodians are dealing with such entities.</p> <p><b>Question 4:</b></p> <p>DB broadly supports the proposals to enhance record keeping requirements and maintain information systems and controls. However, it would be helpful if the MAS could confirm our understanding that the requirement in Regulation 39(2) to keep records on the ‘purpose of withdrawal from the custody account’ is satisfied where the withdrawal is for the purpose of transferring assets in accordance with the customer’s written directions, pursuant to Regulation 35(c).</p> <p><b>Question 5:</b></p> <p>DB supports the intent to increase customer transparency. However, we ask the MAS to expressly confirm that “customers” refers only to direct customers of the relevant CMS licensee – otherwise, this obligation would be multiplied, rapidly making it unmanageable. For example, if the risk disclosure applied beyond the product distributor, it would reach into potentially multiple product originators and further up into further multiples of original fund structures. The same applies for other types of product.</p> <p>We also respectfully ask the MAS to revise the proposal requiring disclosure of material differences between the asset protection regime in Singapore and each individual foreign asset protection regime in which the client assets may be held. Otherwise the proposed requirement will be extremely onerous and costly to meet. Client asset protection regimes vary in all jurisdictions may be subject to frequent changes in law and regulation, and it is not clear whether CMS licensees will be required to update disclosures as and when there are changes to these foreign jurisdictions’ regimes. The variety and variability of regimes will result in this disclosure</p>
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		<p>requirement becoming unmanageable. For example, a retail customer carrying out online investments from his personal home computer may easily buy financial instruments, through a CMS licensee, from multiple jurisdictions all over the world. The amount of legal analysis that the CMS licensee needs to carry out (by engaging law firms in multiple jurisdictions) in order to be able to produce the required disclosure will be tremendous. We ask the MAS to consider the compliance costs involved. An alternative could be for the MAS to produce a standard form disclosure, or support an industry standard form of disclosure to satisfy this proposal.</p> <p><b>Question 6:</b></p> <p>DB supports the proposal.</p> <p><b>Question 7:</b></p> <p>DB supports the proposals. However, with respect to Question 7(b), we ask the MAS to allow the CMS licensee flexibility to obtain consent, as an alternative, through agreements other than the agreement governing the customer's account. For example, the relevant risk disclosure may be more conveniently and appropriately placed, not within the agreement governing the account, but within the agreement governing the transactions that the customer is entering into with the CMS licensee, and which result in the customer placing moneys with the CMS licensee.</p> <p><b>Question 8:</b></p> <p>DB supports the proposal. However, it is not clear whether this proposal will be satisfied where CMS licensees make available electronic records, via systems using a login and password, to customers, rather than sending specific statements of account.</p> <p><b>Question 10:</b></p> <p>DB supports the proposals. However, not all of the LCB Regulations, in respect of customer's assets, should be extended to EFIs. This is because:</p> <ul style="list-style-type: none"> <li>▪ Regulations 26(1)(a), 26(1)(c) and 26(2) are not applicable to an EFI which receives customer's assets because it is providing custodial services to the customer.</li> </ul>
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		<ul style="list-style-type: none"> <li>▪ Regulation 27(1) is excluded by Regulation 27(2).</li> <li>▪ Regulation 28 is excluded by Regulation 27(2).</li> <li>▪ Regulation 29 is excluded by Regulation 27(2), as an EFI which provides custodial services cannot be expected to conduct due diligence on itself.</li> <li>▪ Regulation 32 is only applicable where a CMS licence holder assists its customers to deposit their assets with a custodian, and not where an EFI is providing custodial services to its customers.</li> </ul>
8	Duff & Phelps Corporation	<p><b>Question 3:</b></p> <p>Agree. There should be consistency between the standards of care taken where moneys and assets are placed with local or overseas financial institutions.</p> <p><b>Question 7:</b></p> <p>We agree that a disclosure associated with use of Regulation 34 SF(LCB) R is a good measure.</p> <p>The response to the Consultation Paper on customer monies and assets may be a good opportunity for MAS to clarify the application of Regulation 34 of the SF(LCB)R to FMCs, in particular by defining the definition of “customer”. Regulation 34 applies to both FMCs that are CMSLs and RFMCs by virtue of Regulation 54A of the SF(LCB)R:</p> <ol style="list-style-type: none"> <li>1. What is the definition of customer? As the FMC does not directly deal with fund investors except via the fund managed by the FMC or other investment entity / adviser advised by the FMC, does it refer to the fund or other investment entity / adviser? If so, should the FMC make the relevant disclosure to the fund or other investment entity or to the fund investors? If the FMC’s disclosure is to the fund, should fund investors be notified and if so how?</li> <li>2. How do Regulation 34(2), (3), (4) apply to FMCs, whether hedge (frequently utilising prime broker services), private equity/venture capital and other strategies?</li> </ol>

9	Eastspring Investments (Singapore) Limited	<p><b>General comments:</b></p> <p><b>EISL:</b> In addition to our feedback on MAS' new proposals below, we would also appreciate MAS' clarification on whether monies or assets received on account of a Capital Markets Services ("CMS") licensee's customer, which are deposited in trust accounts or custody accounts, should be included in the computation of the CMS licensee's risk-based capital.</p> <p><b>Question 1:</b></p> <p><b>EISL:</b> In addition to our feedback on MAS' new proposals below, we would also appreciate MAS' clarification on whether monies or assets received on account of a Capital Markets Services ("CMS") licensee's customer, which are deposited in trust accounts or custody accounts, should be included in the computation of the CMS licensee's risk-based capital.</p> <p><b>Question 2:</b></p> <p><b>EISL:</b> We would appreciate MAS' clarifications on the following:</p> <ul style="list-style-type: none"> <li>(i) Given that the current LCB Regulations are more applicable to moneys (i.e. cash) held on behalf of customers by CMS licensees, how would the requirements (such as depositing of moneys received in a trust account) on the handling of customers' moneys under the LCB regulations also apply to customers' "contractual rights"?</li> <li>(ii) Specifically, in the context of fund management companies, would this mean that all contractual rights (e.g. futures contracts) arising from transactions entered into by the fund managers as part of their portfolio management activities are to be subjected to the LCB Regulations as well?</li> <li>(iii) If it is the above case, would MAS expect fund management companies to enter into separate brokers' agreements for each client or would clients be required to enter into agreements</li> </ul>
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		<p>directly with the brokers to deal in such transactions?</p> <p>(iv) Lastly, would the new LCB Regulations apply retrospectively to existing contractual rights arising from transactions entered into by the CMS licensee on behalf of a customer or with a customer?</p> <p>Separately, in the context of fund management companies, custodians are typically appointed by clients (in the case of institutional investors) or appointed by trustees (in the case of Singapore-domiciled funds). As such, in such cases where the deposit-taking financial institutions and custodians are appointed by clients or trustees of funds, we would like to confirm that fund management companies are not required to conduct due diligence on the suitability of the deposit-taking financial institutions and custodians.</p> <p><b>Question 3:</b></p> <p><b>EISL:</b> We seek MAS' clarification on whether the requisite acknowledgement required under regulations 18 and 28 of the LCB Regulations should be obtained retrospectively from the overseas FIs, which the CMS licensees have already engaged.</p> <p><b>Question 4:</b></p> <p><b>EISL:</b> We would like to confirm that in the case where deposit-taking financial institutions and custodians are appointed by clients, the requirement for CMS licensees to maintain such information systems would not be imposed on the CMS licensees as the CMS licensees would not have access to the deposit-taking financial institutions and custodians' records.</p> <p><b>Question 5:</b></p> <p><b>EISL:</b> We would appreciate MAS' clarifications on the following:</p> <p>(i) How long in advance must the disclosure be made to the CMS licensees' customers?</p> <p>(ii) Whether a CMS licensee is required to provide the disclosures to existing customers retrospectively.</p>
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		<p>Separately, in relation to funds sold to retail investors, we are of the view that fund management companies (which handle clients' moneys and assets) should only be required to provide the disclosures to the distributors (which the fund management companies directly engage) and not be required to provide the disclosures to the end retail clients (which are engaged by the distributors). Notwithstanding, we would like to seek MAS' confirmation that the required disclosures can be provided in fund documents/prospectuses.</p> <p>We are also of the view that fund management companies should not be required to provide the disclosures to its staff who participates in staff investment schemes, as such schemes are part of employee benefits.</p> <p><b>Question 6:</b></p> <p><b>EISL:</b> We note that MAS is of the understanding that in practice, CMS licensees perform daily computation for all moneys and assets deposited in trust accounts or custody accounts. However, as far as we are aware, in practice, some CMS licensees (including custodians) only perform monthly reconciliation of assets (e.g. stocks). As such, we respectfully suggest that MAS does not proceed with the proposal to extend the daily computation requirement under Regulation 37 of the LCB Regulations to all CMS licensees holding customer's moneys and assets.</p> <p><b>Question 7:</b></p> <p><b>EISL:</b> We seek MAS' clarification on whether there is a need for CMS licensees to provide such risk disclosure to and obtain consent from its customers retrospectively.</p> <p><b>Question 8:</b></p> <p><b>EISL:</b> We would appreciate MAS' guidance on the "period" that MAS deems "reasonably promptly" for CMS licensees to respond to customers' requests for their statements of accounts.</p>
10	Fidelity International	<p><b>Question 2:</b></p> <p>We agree in-principle that CMS licensees should conduct some form of due diligence on deposit-taking financial institutions</p>

		<p>prior to appointing them, and on a periodic basis thereafter. However, we are of the view that the MAS rule should specify that the extent and frequency of the due diligence should commensurate with the perceived risks in dealing with such institutions. For instance, where the deposit-taking financial institution or the custodian is regulated by the MAS, the MAS should exempt the CMS licensee from having to consider the following factors (<i>as set out in clause 3.7(a), (b) and (c) of the consultation paper</i>) in its due diligence review:</p> <ul style="list-style-type: none"> <li>a) the legal requirements or market practices relating to the holding of customer's moneys and assets that could adversely affect customer's rights during business as usual and in the event of the default or resolution of the CMS licensee, the third party deposit-taking financial institution or custodian;</li> <li>b) the financial condition, expertise and market reputation of the third party deposit-taking financial institution or custodian; and</li> <li>c) protection (or lack thereof) attendant upon the regulatory status of the third party deposit-taking financial institution or custodian.</li> </ul> <p>One objective of any bank regulator is to maintain public confidence in its financial system and the financial institutions under its supervision. It will be odd then if a CMS licensee is not able to place reliance on this fact but have to conduct extensive due diligence on a deposit-taking financial institution or custodian notwithstanding that it operates in a well regulated jurisdiction and is subject to both high prudential standards and supervision of a regulator.</p> <p>In respect of a deposit-taking financial institution or custodian operating outside of Singapore, the CMS licensee may not have the requisite knowledge of or expertise on the legal requirements in that jurisdiction relating to the holding of customer's moneys or assets that could adversely affect customer's rights during business as usual and in the event of the default or resolution of the CMS licensee, the third party deposit-taking financial institution or custodian (<i>as per clause 3.7(a)</i>), and the protection attendant upon the regulatory status of the financial institution or custodian (<i>as per clause 3.7(c)</i>). This entails obtaining legal advice from external counsel and updating the advice on a periodical basis in case</p>
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		<p>there should be any regulatory changes. This raises the cost of compliance, which may eventually be borne by the customers. Also, where does the enquiry stop in the case where the custodian has sub-custodian relationships in jurisdictions mandated by local market rules for trade settlement purposes? The enquiry work and associated costs will be enormous in the case of a global investment mandate issued by a customer. We also question the usefulness of such enquiry if it does not change the fact that the CMS licensee (or its global custodian) still needs to appoint a custodian in that jurisdiction for trade settlement purposes pursuant to either a client instruction or investment mandate.</p> <p><b>Question 3:</b></p> <p>We are concerned if the MAS' requirement to obtain an acknowledgment from an overseas financial institution would conflict with the rules and regulations of the jurisdiction under which the financial institution is subject to. Hence, we proposed that the MAS provide an exemption in the event where its requirement conflicts with the rules and regulations of the overseas jurisdiction. Also, the MAS' requirement should only be applicable to the overseas financial institutions with whom the CMS licensee has established a contractual relationship. It would not be practicable or achievable if the requirement extends to any sub-custodians appointed by the global custodian (<i>the latter being appointed by the CMS licensee</i>) as the CMS licensee does not have any contractual relationship with the former.</p> <p><b>Question 4:</b></p> <p>In relation to MAS' proposal for CMS licensee to maintain information systems and controls that can promptly produce the information under clauses 3.12(a) to (d), we would like to clarify the form in which this requirement could be met. The CMS licensee is already required under Section 102 and Regulations 39(1) and (2) to maintain record of each customer's transactions in its backoffice accounting system. Such record will contain the details of customers' monies or assets deposited in a trust account or custody account. Separately, the CMS licensee keeps a record of the information (<i>as per Section 102</i>) relating to the trust or custody account (<i>e.g. legal agreements, due diligence reviews, and communication with the financial institution or custodian on the nature and purpose of the trust or custody account</i></p>
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		<p><i>including their acknowledgement as per Regulations 18 and 28</i>). The above satisfies the information prescribed under clause 3.12(a) and (b). Although the information is stored separately, it would be obvious to any external party if it enquires on the details of the customer's monies and assets, and how these are held.</p> <p>We will be concerned if the MAS expects the CMS licensee to enhance its existing backoffice accounting system, where customers' transactions are currently recorded, to create additional fields for the information proposed under clause 3.12. Additional resource and costs are incurred for system enhancement and to input the data in those created fields. We question its usefulness if the information on the financial institution or custodian, and the nature of the respective accounts are easily retrievable from other records.</p> <p>Based on the above, we are of the view that it is not necessary to prescribe the information in clause 3.12(a) and (b).</p> <p>In relation to clause 3.12(c), such information could be found in the due diligence review of the financial institution or custodian (<i>ref. the due diligence requirement in clause 3.7</i>). We do not agree that such information be replicated in another information system or in the existing backoffice accounting system.</p> <p><b>Question 5:</b></p> <p>We are of the view that existing and proposed rules have accorded adequate protection on customers' monies and assets. For instance, the CMS licensee is already required to segregate clients' monies or assets from its own, obtain acknowledgement from the financial institution or custodian, and keep proper records of customers' transactions. Any attendant risks associated with trading or investing in a specific market or product would have been disclosed to the customer either in the account terms and conditions, or product prospectus. Hence, the proposed disclosure requirement is not necessary. The customer will be inundated with an additional document on top of other standard documents such as Specified Investment Product disclosures, product prospectus, FATCA/CRS declaration, Customer Knowledge Assessment, and account terms and conditions.</p>
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		<p>In respect of the disclosure where customer's monies or assets are held in a foreign jurisdiction, the CMS licensee may not have the knowledge of the material differences between the protection regimes in Singapore and that jurisdiction. Legal advice may be required and resources need to be committed to then present the information in a clear and simple language for the customer. The above raises the cost of compliance and we question the benefit of this additional disclosure in assisting the customer to understand the associated risks.</p> <p>If the disclosure requirement is introduced, we are of the view that exemptions should be granted for the following situations:</p> <ul style="list-style-type: none"><li>a) Customer's assets and moneys deposited with financial institutions or custodians which are regulated by the MAS. These financial institutions and custodians are subject to prudential standards set by the MAS and there are also adequate protection prescribed under the Securities and Futures Act.</li><li>b) Customers who qualify as institutional investors and/or accredited investors. Unlike retail customers, these investors are professionals armed with adequate knowledge and ability to protect their own interests. This is also consistent with the current approach whereby Regulation 33 waives the requirement to provide risk disclosure in the case where the customers are accredited investors.</li></ul> <p><b>Question 8:</b></p> <p>While we have no in-principle objection to the proposal, we wish to emphasise that the expected turnaround time for such request must be reasonable.</p> <p><b>Question 9:</b></p> <p>Regulation 16(1)(b) requires the CMS licensee to deposit all customers' moneys in a trust account or in an account directed by the customer while Regulation 26(2) requires the CMS licensee to deposit customer's assets in the custody account by no later than the next business day. By dis-applying Regulations 16(1)(b) and 26(2) in the case of retail customers, does that mean that such customers are unable to designate a bank account or custody account of their choice to receive</p>
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		<p>their monies or assets? If so, we question how this would protect the interest of the customer.</p> <p>For obvious reasons, the CMS licensee needs the customer to designate an account for which monies or assets due to that customer will be deposited. For instance, the customer needs to indicate his/her CPF Agent Bank or SRS Operator for the purposes of investing using his/her CPF or SRS monies. We are concerned that dis-applying Regulations 16(1)(b) and 26(2) would disrupt the current market practices for settlement of customers’ CPF and SRS trades.</p> <p>Separately, if the CMS licensee is not permitted to obtain retail customers’ consent to deposit his/her monies or assets in any account determined by the CMS licensee, we would question the regulatory objectives in setting out the protection rules (<i>under the Securities and Futures Act and in this consultation paper</i>) for trust account and custody account in the first instance. We do not understand how such a customer could inadvertently opt out of the protection provided under the Securities and Futures Act. In the above scenario, the protection rules continue to apply to the trust or custody account used by the CMS licensee to deposit monies or assets of the consenting customers.</p>
11	FIA	<p><b>General comments:</b></p> <p>FIA appreciates the opportunity to respond to the MAS Consultation Paper on Enhancements to Regulatory Requirements on Protection of Customer’s Moneys and Assets dated 19 July 2016 (“Consultation Paper”).</p> <p>FIA strongly supports the regulatory intention of the proposals to enhance the regulatory regime governing the protection of customer money and assets held by capital markets intermediaries. Customer confidence in the markets and in client money and asset protections are essential to the long-term viability of the futures and derivatives markets. However, certain of the proposals may result in significant compliance and regulatory burdens for intermediaries that may outweigh the intended regulatory benefits. Our members also have strong concerns about the proposed expanded definition of ‘customer moneys’ to include contractual rights. We set out our detailed response below and remain available to discuss</p>

		<p>with the MAS these concerns and any possible alternatives and options.</p> <p>The Consultation Paper states that these proposed changes will not apply to non-centrally cleared OTC derivatives included under the Consultation Paper on Margin Requirements for Non-Centrally Cleared Derivatives, issued October 2015 (the "October Margin Consultation"). Therefore, we would be grateful if the MAS can confirm that it is intended for the current Consultation Paper to apply to OTC derivatives (e.g. physically settled FX swaps) which are not covered in the scope of the October Margin Consultation.</p> <p><b>Question 1:</b></p> <p>We understand the MAS proposes to expand the definition of 'customer moneys' to cover contractual rights arising from transactions entered into by CMS licensees on behalf of a customer (e.g. mark-to-market accruals arising from the change in value of positions in futures contracts) or with a customer (e.g. contract for differences).</p> <p>We note this proposal stems from the IOSCO2 Final Report: Recommendations Regarding the Protection of Client Assets ("IOSCO Recommendations") which provides recommendations for the protection of a diverse range of client assets.</p> <p>In the IOSCO Recommendations, client assets are defined to include 'to the extent appropriate, client positions, client securities, and money (including margin money) held by an intermediary for and on behalf of a client. Client positions are defined as 'contractual rights arising from transactions entered into by an intermediary on behalf of its clients, including mark to market accruals arising from the change in value of futures and options positions'.</p> <p>We appreciate that the MAS has the regulatory objective to include contractual rights (such as client positions) under its customer money and asset protection regulatory regime to align with the IOSCO Recommendations. Whilst we understand that detailed legislative drafting for the proposal is not currently available, we do strongly urge the MAS to reconsider any expanded definition of customer money to include contractual rights. Our members believe it would be extremely problematic to incorporate broad contractual rights</p>
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		<p>in the same definition as customer money when these rights are not money and cannot be treated in the same way due to their nature and character. Limiting the definition would be consistent with how customer money is treated under the IOSCO Recommendations and will assist in minimising any unintended consequences and disruption to current market structure arrangements.</p> <p>As noted in the Glossary in the IOSCO Recommendations, client money is a distinct concept differentiated from both client positions and client securities. In addition, in many jurisdictions the definition of customer money is limited to money only and does not include contractual rights. For example, under the United Kingdom Financial Conduct Authority Client Assets Sourcebook client money refers to any form of money, including cheques and other payable orders of any currency. Similarly, in Hong Kong under the Securities and Futures Ordinance, client money refers to money received or held on behalf of a client. A similar approach has been taken in Australia which limits the definition of client money to money. Our members are also concerned that an expanded definition of customer money that includes broad contractual rights may lead to unintended consequences and disruption to current market structure arrangements. For example, it may be difficult to comply with customer money obligations such as segregation. The ability to segregate contractual rights between an intermediary and its customer is difficult and arguably impossible. Such rights are not negotiable assets or instruments that can be freely transferred, placed into custody or otherwise dealt with in the way that the LCB Regulations currently envisage for customer money. For example, it would not be possible for such contractual rights to be held in a trust account due to the legal character of such rights and therefore compliance with the customer money rules would be extremely difficult.</p> <p>FIA members also have concerns about the potential detrimental impacts on certain clearing relationships between clearing members and CCPs. For example, a broad definition may lead to an implication that the customer has ownership interests in rights to proceeds or return of margin or other receivables that are otherwise held by the clearing member which would impact existing market arrangements and relationships. Clearing members may also be faced with potentially duplicative capital requirements if clearing members will need to 'pre-fund' any contractual rights to</p>
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		<p>profits that a customer may have prior to settlement of a transaction in order to meet customer money regulatory requirements. This could have a 'knock-on effect' for settlement of transactions which would need to be carefully considered. There may also be potentially detrimental impacts to existing netting analysis relied upon by intermediaries for their existing agency clearing business and their exposure to a CCP or third party broker.</p> <p>It may also be difficult for CMS licensees to comply with provisions that relate to deposit-taking institutions in foreign jurisdictions where customer money is placed (eg the proposed acknowledgement from foreign institutions set out in paragraphs 3.8 and 3.9 of the Consultation Paper) if the laws in the foreign jurisdiction do not recognise 'contractual rights' as customer money or there are conflicts in laws.</p> <p>It is clear that there may be a number of unintended consequences and 'knock-on effects' that may arise from the inclusion of broad contractual rights to the definition of customer money due to the inherently different nature and characteristics of money and contractual rights. We therefore urge the MAS to retain the existing customer money definition and reconsider its expansion. This approach would also be consistent with how client money is treated under the IOSCO Recommendations.</p> <p>We would be happy to discuss these issues in further detail with the MAS and to discuss possible options and alternatives in order to meet regulatory objectives. Our members are particularly interested in ensuring that any changes to definitions under the LCB Regulations achieve regulatory objectives but also do not cause unintended harm and disruption to existing well-functioning markets. We also encourage rules to be harmonised as much as possible across jurisdictions to minimise duplicative or conflicting requirements.</p> <p><b>Question 2:</b></p> <p>We support the regulatory intent to ensure that CMS licensees exercise due care and diligence in the selection of both deposit-taking financial institutions and custodians. However, for implementation purposes, we would be grateful if the MAS could consider the following:</p>
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		<p>(a) We request that the MAS provide detailed guidance on the focus areas and expectations for due diligence and steps a CMS licensee should take to comply with the due diligence requirements. This includes guidance on the expected timing for 'periodic' reviews and the types and scope of searches or screenings required. We note that in other jurisdictions such as the United Kingdom, the frequency of periodic reviews is not expressly stated but the general market practice is for such a review to be conducted annually. Our members would support similar timing in Singapore.</p> <p>(b) Whether the due diligence requirements will apply to affiliate institutions of the CMS licensee. We request the MAS to consider an exemption from these due diligence requirements if the trust account is opened at a deposit-taking financial institution which is within the same corporate group as the CMS licensee.</p> <p>(c) We request the MAS consider an exemption from these due diligence requirements if the deposit-taking financial institution is authorised and regulated by the MAS or by a regulator in a jurisdiction that is comparable and where the MAS has entered into an appropriate memorandum of understanding.</p> <p>(d) We note the MAS states that CMS licensees should consider 'the need for diversification and mitigation of risks, where appropriate, by placing customer's moneys and assets with more than one third party deposit-taking financial institution or custodian'. In relation to this requirement, we note that for futures trading activity it is common practice amongst futures brokers to maintain a single primary relationship with a global custodian with respect to that specific business line. This is because the global custodian is able to offer services across multiple jurisdictions and markets. Having more than one custodian or deposit-taking institution holding customer moneys may result in duplicative operational and regulatory burdens which outweigh any regulatory benefits especially having regard to the size and nature of the business of certain CMS licensees. In addition, there may be a limited selection of appropriately rated (triple AAA) financial institutions in jurisdictions where a CMS licensee is placing customer money and assets and we would like to clarify that it is not the MAS' intention for CMS licensees to</p>
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		<p>engage the services of a lower rated institution to meet the diversification requirement. Concentration risk is also addressed to a large extent for firms providing trading and clearing services as a significant amount of client margin is passed through and posted to CCPs and third party brokers to support the maintenance of positions. For many global firms who operate global businesses, an assessment of exposure and concentration risk to a global custodian is often made at a global level looking at the entire global relationship. We therefore request the MAS provide clear guidance on when a CMS licensee can rely on the 'where appropriate' qualifier under this requirement and where exemptions can be relied upon.</p> <p><b>Question 3:</b></p> <p>We understand the MAS proposes to introduce a requirement for CMS licensees to obtain an acknowledgement from overseas financial institutions if customers' moneys and assets are placed with them (similar to the current requirement to obtain an acknowledgement from domestic financial institutions).</p> <p>The acknowledgement is to include:</p> <ul style="list-style-type: none"> <li>▪ The accounts in which the customer's moneys and assets are deposited are designated as customer's trust accounts;</li> <li>▪ The moneys and assets are held on trust for the customers and segregated from the CMS licensee's own moneys and assets; and</li> <li>▪ The financial institution will not use the moneys and assets in those accounts to set-off against any debt owed by the CMS licensee to the financial institution.</li> </ul> <p>We support the introduction of this requirement for overseas financial institutions however we seek guidance from the MAS whether this acknowledgement:</p> <p>(a) can be obtained on a 'reasonable endeavours' basis. It is not known with certainty that an overseas financial institution will always agree to provide such an acknowledgement as there may be local law restrictions or conflicts in their own jurisdiction; and</p>
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		<p>(b) is only required at the opening of the account or whether it is required to be reissued on a regular basis.</p> <p>We also query whether this requirement will apply if customer moneys and assets are placed with central banks or whether it will only apply to financial institutions such as commercial banks and other authorised deposit-taking institutions. There may be circumstances where obtaining such an acknowledgement will be difficult depending on the character and type of foreign institution so the introduction of a relevant qualification may be appropriate.</p> <p><b>Question 4:</b></p> <p>We understand that the MAS would like to introduce a new requirement for CMS licensees to maintain information systems and controls that can promptly produce salient information in a format understandable to an external party (eg a resolution authority or an administrator). Salient information is to include the location of customer's moneys and assets, how the assets are held, type of segregation at all levels of the holding chain, the applicable customer protection rules if held in a foreign jurisdiction and outstanding loans of customer securities arranged by the CMS licensee.</p> <p>We support this proposal and the regulatory intent to have important information promptly available. However, for implementation purposes, we would be grateful if the MAS could clarify the following:</p> <p>(a) The MAS has stated that CMS licensees are required to have information on the type of segregation and the 'effects of the segregation on customer's ownership rights'. We request clarity on the type of information this statement is referring to e.g. is it whether the segregation would protect customer's assets or the operational effects of the segregation?</p> <p>(b) The proposed transitional period that will be granted to CMS licensees to comply with these new requirements. We note there may be some significant build time and infrastructure costs involved in complying with this requirement.</p> <p><b>Question 5:</b></p>
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	<p>We understand that the MAS would like to introduce a requirement for CMS Licensees to provide customer disclosures setting out:</p> <ul style="list-style-type: none"> <li>▪ The manner in which CMS licensees hold the customer's moneys and assets, including the type of segregation and the existence of any holding chain and the risks associated with the arrangements adopted by the CMS licensee;</li> <li>▪ Where the customer's moneys are held in a foreign jurisdiction, the material differences between the customer's money and asset protection regimes in Singapore and that jurisdiction, and the potential consequences of such differences.</li> </ul> <p>Whilst we support the regulatory intent to provide customers with adequate disclosure, we have strong concerns over the requirement to identify differences between foreign customer protection regimes and the Singapore regime and to outline the potential consequences of such differences. We believe this requirement will result in onerous and significant regulatory and compliance burdens for CMS licensees that will outweigh the intended regulatory benefits.</p> <p>Client money and asset protection regimes in any jurisdiction will differ in many detailed ways depending on the risk profile of a customer. It will be very difficult for intermediaries to assess across legal regimes for each individual client (when it may only be dealing with one part of that client's business) especially when it is not giving risk recommendations to the customer. For example, is it possible for an intermediary to assess and determine with certainty that a trust structure under the Australian client money regime offers more or less protection than a designated trust account under the Singapore regime?</p> <p>Our members have expressed concerns that the degree of complexity required to address material differences and potential consequences between different regulatory regimes may not be well understood by all customers and could potentially be misleading. Overseas jurisdictions may also have various changes in law and regulation which impacts on this disclosure requirement. Therefore, is it the MAS' expectation that CMS licensees are required to update these disclosures regularly? This disclosure requirement could be very burdensome, costly and time consuming for intermediaries.</p>
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		<p>We request the MAS to reconsider and amend this requirement for money and assets held in foreign jurisdictions. An alternative could be to provide a broad disclosure identifying that the protection regime in a foreign jurisdiction may be different to the Singapore regime and in some cases protection may not be available and may result in the intermediary having an unsecured claim against the custodian.</p> <p>We would also be grateful if the MAS could clarify the following:</p> <ul style="list-style-type: none"> <li>(a) Whether a standard form disclosure will be produced by the MAS or whether the industry can continue to rely on industry standard disclosures such as those produced by industry associations e.g. FIA.</li> <li>(b) The timing for providing such disclosures, is this required at the account opening stage only?</li> <li>(c) Whether it is expected that risk disclosures only be provided to new customers or whether the risk disclosure requirement will apply to existing customers?</li> <li>(d) Whether an exemption will be granted for institutional and accredited investors.</li> <li>(e) Whether an exemption can be granted to customers who are affiliates or related group companies of CMS licensees.</li> </ul> <p><b>Question 6:</b></p> <p>We support this proposal. We note that some members who operate global businesses with global customers will often compute daily for customers on a consolidated global basis rather than on a jurisdiction by jurisdiction basis.</p> <p><b>Question 7:</b></p> <p>We support this proposal but we would be grateful if the MAS could clarify:</p> <ul style="list-style-type: none"> <li>(a) if the requirement will apply to new customers only or is the MAS expecting that CMS licensees also apply this requirement to existing customers.</li> </ul>
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		<p>(b) whether an exemption can be granted to customers who are affiliates or related group companies of CMS licensees.</p> <p>(c) whether the MAS will be providing standard language that can be included in customer agreements to meet this requirement.</p> <p>(d) the proposed transitional period to be given to CMS licensees to comply with these requirements.</p> <p><b>Question 8:</b></p> <p>We support this proposal but recommend that this requirement be dis-applied if customers have online access to their statements of accounts (similar to the exemption set out in Regulation 40(1A) of the LCB Regulations).</p> <p><b>Question 9:</b></p> <p>We support this proposal to dis-apply these conditions for retail customers.</p> <p>With respect to non-retail customers, members request confirmation that it will be possible for non-retail customers to agree upfront (in an account agreement or otherwise) for customer moneys or assets to be deposited into a specified account, i.e. it would not be necessary to obtain a new direction / agreement from the non-retail customer each time a deposit is to be made.</p> <p><b>Question 10:</b></p> <p>In principle, we support this proposal to dis-apply the LCB Money Rules to EFIs. However, we seek clarity on the definition of the "LCB Money Rules" and whether this proposal will apply to all customer money requirements in the LCB Regulations. It is not currently clear from section 4 of the Consultation Paper which provisions of the LCB Regulations this proposal relates to.</p> <p>Customer money requirements appear within various provisions of the LCB Regulations and in other rules and regulations e.g SGX-DC rules and under the Securities and Futures Act. We therefore recommend that a broad dis-application for all customer money requirements for EFIs be considered to ensure consistency across applicable rules and</p>
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		regulations. We would also encourage the MAS coordinate and discuss where appropriate with clearing houses (such as SGXDC) to jointly dis-apply and harmonise customer money requirements for EFIs to minimise any duplicative and conflicting requirements.
12	iFAST Financial Pte Ltd	<p><b>Question 6:</b></p> <p>We would wish to highlight that the current industry practice on reconciliation of customer's moneys and assets for unit trust ("UT") is performed monthly. The UT industry does not provide distributor platforms with daily holdings position. By performing daily computation, we foresee the following challenges:</p> <ul style="list-style-type: none"> <li>▪ obtaining daily statements from Fund Managers/Transfer Agents</li> <li>▪ obtaining these daily statements in electronic format</li> <li>▪ additional costs on obtaining these daily statements</li> </ul>
13	IGA Asia Pte Ltd	<p><b>General comments:</b></p> <p>While policy changes for improvements in the protection of customers' moneys and assets ("CMA") are laudable, other issues related to CMA should also be addressed:</p> <p>(a) The legal status of the Customer's Moneys trust account (CMTA) should be further formalized in such a manner where the deposit account holding the customer's moneys will automatically transcend into a formal trust structure upon either the insolvency of the CMI or the specified financial institution to facilitate the more expeditious, efficient and effective disbursements of customers' moneys.</p> <p style="padding-left: 40px;">(i) A similar vehicle already exists in common law known as a "testamentary trust" which originates as a Will during the life of the Grantor but converts to a formal Trust upon the death of the Grantor.</p> <p style="padding-left: 40px;">(ii) As the current SF(LCB)R stands, there is no protection for customers' in the event of the insolvency of the specified financial institution holding</p>

		<p>the deposits of the CMTA as they are viewed in equal standing with other of the financial institution deposits.</p> <p>(iii) When the CMI becomes insolvent, the Court appointed Administrator will have to play the role of a "Trustee" of the CMTA in-lieu of the insolvent CMI. If the CMTA were to evolve into a formal trust structure, the appointed Trustee may proceed immediately to seize ownership of the CMTA deposits and disburse them accordingly. It is envisaged that under this proposal the Trustee would be a regulatory body (e.g. MAS or a Trustee appointed by MAS).</p> <p>(b) Currently in the SF(LCB)R, there are no provisions for the treatment of unclaimed moneys which have been accumulated in the CMTA of the CMI. In other jurisdictions there are provisions permitting the CMI to donate those unclaimed funds upon the unsuccessful attempt to notify potential claimants; to charity similar to provisions in the Common Gaming Houses (Exemption) Notification for unclaimed prizes in a Lucky Draw. There should be a set of guidelines on how CMIs could deal with unclaimed moneys in the CMTA.</p> <p>(c) Under SF(LCB)R, there are no exemptions for a CMI to be exempted from providing a monthly statement to the retail customer notwithstanding that <i>"on a real-time basis, those particulars in the form of electronic records stored on an electronic facility and the customer has consented to those particulars being made available to him in this manner"</i>. Currently there are CMI's who email such statements on a daily basis to customer and offer them accessibility on the web platform. Retail customers have become more technology savvy and would prefer accessing such information on a demand basis and through an electronic facility in order not to spam their personal emails. It would thus be preferred that the same exemption be offered to retail customers especially when they are operating a self-directed dealing service.</p> <p>(d) There are significant provisions in the SF(LCB)R to protect customer moneys deposited with the CMI. However there does not seem to be sufficient consideration provided to highlight to customers that notwithstanding any initial and continual due diligence carried out by CMIs to ascertain</p>
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		<p>the creditworthiness of the financial institution hosting the CMTA, the risks remains that the CMTA is not protected in the event of the insolvency of the financial institution hosting the CMTA. There should be provisions in the SF(LCB)R restricting any claims from the CMI by the customer in the event that the financial institutions hosting the CMTA become insolvent when the CMI had reasonably fulfilled its due diligence obligations.</p> <p><b>Question 1:</b></p> <p>(i) The current schedules for reconciliation of customer moneys and assets specified in section 37(1) would have to be adjusted to cater for the inclusion of the contractual rights of the customer against the CMI to take into account a longer period in a business trading days which may last for 24 hours for a CMI offering leveraged FX.</p> <p><b>Question 2 (a):</b></p> <p>(i) We agree.</p> <p><b>Question 2 (b):</b></p> <p>(i) The scope of due diligence being proposed is onerous and may result in higher compliance costs which will eventually be passed on to the customers.</p> <p>(ii) Where the CMI appoints a global custodian who in turn have their network of branches and associated sub-custodians whose appointments are constantly being reviewed, it would be onerous for the CMI to review:</p> <ul style="list-style-type: none"> <li>(a) Legal requirements,</li> <li>(b) Market practices,</li> <li>(c) Financial condition,</li> <li>(d) Expertise,</li> <li>(e) Market reputation,</li> <li>(f) Level of protection.</li> </ul> <p>It is proposed instead that the CMI be required to only conduct initial and continuing due diligence on the main custodian and rely on the due diligence done by the main custodian on the sub-custodians and associates on the above review parameters.</p>
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		<p>(iii) Any proposed <u>prescriptive</u> provisions in the SF(LCB)R for CMI's to institute risk mitigation controls (which are already be carried out by the CMIs) would put the CMIs at risk of potential customer legal action when the financial institutions hosting the CMA become insolvent. This needs to be considered in the context of the overall risks of positioning the CMI as having a fiduciary duty to "ONLY" appoint financial institutions hosting the CMA that would "never" become insolvent (refer to paragraph GC (e) above).</p> <p><b>Question 3:</b></p> <p>(i) While the proposal is agreeable, the issue of intra-group arrangements where the parent or associated company of the CMI is the overseas financial institution, then such formal acknowledgements may not be necessary but rather through the normal process of daily reconciliations where they would be factored in the computations.</p> <p><b>Question 4:</b></p> <p>(i) We agreeable that such information systems and controls in so far as the relate to producing the location of customer moneys and assets. However for other salient information related to:</p> <ul style="list-style-type: none"> <li>(a) Legal requirements,</li> <li>(b) Market practices,</li> <li>(c) Financial condition,</li> <li>(d) Expertise,</li> <li>(e) Market reputation,</li> <li>(f) Level of protection.</li> </ul> <p>The CMI should be allowed to rely on the global custodian's systems and controls.</p> <p><b>Question 5:</b></p> <p>(i) While disclosures to customers of the potential risks associated with CMA especially for overseas investments is agreeable, the level of detail to be disclosed for each market invested may not be feasible where a CMI is offering trade executions for global securities. At most the general concepts and principles associated with the risks of offshore CMA could be disclosed but not the full "holding chain" for all the various</p>
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		<p>global markets as it would be both unfeasible and an information overload for the retail customers.</p> <p>(ii) There is a danger of over emphasising the risks of omnibus structures compared to individual segregation as the same risks will apply if the financial institution hosting the CMA and/or the CMI were to become insolvent. The only perceived benefit is the speed of the disbursement which is in fact controlled by the effectiveness of the reconciliation process not the type of structure which will mean operational risks are high for individual segregated models.</p> <p><b>Question 6:</b></p> <p>(i) We are agreeable that as a level playing field, this should be extended to all CMIs and not just limited to CMIs offering futures and leveraged FX. However this has to be constrained by the ability to source the latest market valuation for the security.</p> <p><b>Question 7 (a):</b></p> <p>(i) The practice of lending, mortgaging, pledging, charging or re-hypothecating customer's assets is frowned upon in other jurisdictions. For example, it is forbidden in the UK and is currently being reviewed by the Australian government with a view to banning the practice there as well.</p> <p>As a minimum it should involve a risk disclosure being provided, with such risk disclosure being subject to specific acceptance by clients, rather than a mere disclosure in the relevant customer agreement.</p> <p><b>Question 7 (b):</b></p> <p>(i) Not agreed. See above.</p> <p><b>Question 8:</b></p> <p>(i) The requirement to "respond reasonably promptly" should be exempted for CMIs that offer self-directed dealing services and offer the customers an electronic facility to generate such statements on demand. This electronic facility as mentioned in GC (d) should be extended to cover the obligation of the CMI to provide monthly statements</p>
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		<p>without the need to emailing them out to the retail customer.</p> <p><b>Question 9:</b></p> <p>(i) While the intent is to prevent CMIs who may be indirectly attempting to circumvent the need to set up a CMTA by discretely seeking the customers to agree to an alternative bank account, this does not represent the majority of the CMIs. There is still a merit in permitting retail clients to be offered this option should they choose not to commingle assets in an omnibus structure (as with accredited and high networth investors). Hence a more targeted approach should be used by requiring a customer to have to opt out of a standard CMTA in writing and that all customer agreements must only include the standard CMTA as the default bank account to hold all customers' deposits by the CMI.</p> <p><b>Question 10 (a):</b></p> <p>(i) To ensure a level playing field for CMIs who expend significant resources to maintain the daily computation and reconciliation process for CMTA, EFIs should also be subject to the same LCB Money Rules. This will also be in the interest to offer protection the EFI's customer moneys.</p> <p><b>Question 10 (b):</b></p> <p>(i) Agreed.</p>
14	ING Bank N.V., Singapore Branch	<p><b>General comments:</b></p> <ol style="list-style-type: none"> <li>1. Do the proposed rules apply only to cash / assets furnished in relation to the regulated activities under the SFA? It is not expressly stated so in the consultation paper.</li> <li>2. In lending transactions, it is sometimes a requirement that the borrower should take out swaps to hedge against FX risks or interest rate risks. Typically, the hedge providers are also lenders under the facility or their affiliates and both the loan obligations and swap obligations of the borrower will be secured under the same security package. In such a situation, where the security is granted to ING (for its account or in its capacity as security trustee in the case</li> </ol>

		of a club/syndicated deal), will the proposed rules apply because swap obligations are secured?
15	Investment Management Association of Singapore	<p><b>General comments:</b></p> <p>The scope of the consultation paper is wide and appears to cover all types of Capital Markets Services (“CMS”) licensees, including licensees which are not conducting the regulated activity of providing custodial services for securities. While we understand that the intent is to protect customer’s moneys and assets, the practical implementations to meet regulatory requirements should be taken into consideration as well.</p> <p>In a typical fund management business, for Singapore Authorised Collective Investment Scheme (“CIS”), custodians are appointed by the trustee, whereas for other discretionary fund management business, the client usually appoints its own custodian. Essentially, the fund manager has no part in the selection of custodians.</p> <p>We would like to seek the MAS’ clarification on whether it should be the responsibility of the trustee or the fund management company (“FMC”) to fulfil these proposed requirements.</p> <p>In the case of discretionary fund management, there are instances where the fund manager places moneys with certain financial institutions (“FIs”). Hence, we would like to seek the MAS’ concurrence that the scope of the amendments discussed in this consultation paper should not apply to customer-appointed or trustee-appointed custodian relationships or accounts opened by the fund manager as part of the discretionary investment management process of allocating cash or others.</p> <p>Separately, we would like to seek MAS’ confirmation that FMCs is considered to have fulfilled the handling of customers’ monies and assets requirements under the Securities and Futures (Licensing and Conduct of Business) (“LCB”) Regulations, where arrangements have been made for the sub-transfer agent to open the trust account as well as to operate such accounts in accordance with the LCB Regulations, and the customers’ moneys and assets are held in the name of the sub-transfer agent on trust for the FMC’s customer. Current regulations on handling of customers’ moneys and assets are rather vague on this.</p>

		<p>We would also appreciate MAS' clarification on whether monies or assets received on account of a CMS licensee's customer, which are deposited in trust accounts or custody accounts, should be included in the computation of the CMS licensee's risk-based capital.</p> <p>We would also like the MAS to advise if there is any intent to encompass centrally cleared OTC derivatives into the SF(LCB)R Regulation 19 — customer's money held with a clearing house, as the mechanics of clearing house is similarly applied.</p> <p><b>Question 1:</b></p> <p>In view that FMCs do not typically receive or held customer's money, we would like to seek confirmation from the MAS that the intent to expand the definition of customer moneys to include contractual rights arising from transactions entered into by the CMS licenses on behalf of a customer or with a customer, would not be applicable to FMCs.</p> <p>If the MAS does not agree with the above position, is it then expected of FMCs to enter into separate brokers' agreements for each client? Or would clients be required to enter into agreements directly with the brokers to deal in such transactions? Also, we would appreciate if more guidance could be provided to FMCs on the different types of contractual rights which would be in scope of this proposed definition for FMCs, and that the requirements are aligned with other international standards.</p> <p>Additionally, we would like to clarify if existing contractual rights arising from transactions entered into by the CMS licensee on behalf of a customer, or with a customer, are subjected to the new LCB Regulations.</p> <p><b>Question 2:</b></p> <p>We believe that the extent of due diligence and periodic reviews of deposit-taking FIs and custodians should be on a risk-based approach and commensurate with the materiality of the cash or assets placed.</p> <p>We would appreciate MAS' clarifications on the definition of "deposit-taking financial institutions", given there is currently no definition under the Securities and Futures Act and the LCB</p>
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		<p>Regulation; and whether the “deposit-taking FIs” would refer to the specified FIs set out under regulation 17(1)(a), (b) and (c) of the LCB Regulations (i.e. a bank licensed under the Banking Act; a merchant bank approved as a FIs under the MAS Act; or a finance company licensed under the Finance Companies Act).</p> <p>Additionally, we noted that these fixed deposit accounts are typically opened in the name of “FMCs acting as an agent of [client’s name]”. We would like to seek clarification from the MAS that due diligence requirement on deposit-taking FIs would not be applicable to FMCs which assist clients’ custodians to open fixed deposit accounts as part of fund management services. Given that the nature of such deposit arrangements could be as short as a few days or as long as a year, such deposits are, in our opinion, made as part of cash management, which is a component of investment management. Therefore, the governance should be subject to the investment management process of the CMSL, and should be out of scope of the proposed requirement.</p> <p>In the context of FMCs, as mentioned earlier, custodians are typically appointed by clients (in the case of institutional investors) or appointed by trustees (in the case of Singapore-domiciled funds). Therefore, in such cases where the deposit-taking FIs and custodians are appointed by clients or trustees of funds, we propose that FMCs should not be subjected to the requirements to conduct due diligence on the suitability and ongoing periodic suitability reviews of the deposit-taking FIs and custodians.</p> <p>To be clear, custodians does not include brokers, financial intermediaries, and counterparties (which may hold a custodian license as well) where cash/assets are deposited/placed as collateral for the purpose of discretionary investment management.</p> <p>Separately, if the proposed exemption is not feasible, we would like to clarify if the initial due diligence should be conducted retrospectively on deposit-taking FIs, which CMS licensees have already engaged. Please also provide guidance on the frequency of the “periodic reviews” to be carried out by CMS licensees to assess the suitability of deposit-taking FIs and custodians.</p>
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		<p>With regards to conducting due diligence on deposit-taking institutions, we would also like to clarify if the requirements will also extend to group affiliates of the CMS licence holders. If so, can a risk-based approach be considered such that a lesser review may be conducted while leveraging off the existing group's policies and procedures?</p> <p>Also, we would also seek greater elaboration from the MAS on the considerations provided in 3.7(a) to (d).</p> <p><b>Question 3:</b></p> <p>We would like to seek confirmation from the MAS that these requirements will be imposed on custodians and not FMCs in view that moneys and assets are held by custodians.</p> <p>While we support the principle of having a level playing field across domestic and overseas FIs, the practical experience in obtaining certain information from overseas FIs can be quite challenging. They may not have an equivalent concept in their jurisdictions and may resist providing such an acknowledgement in the form required under Regulation 18. Hence, we propose that the MAS provides an exemption in the event where its requirement conflicts with the rules and regulations of the overseas jurisdiction. Also, the MAS' requirement should only be applicable to the overseas financial institutions with whom the CMS licensee has established a contractual relationship. It would not be practicable or achievable if the requirement extends to any sub-custodians appointed by the global custodian (the latter being appointed by the CMS licensee) as the CMS licensee does not have any contractual relationship with the former.</p> <p>If the proposed exemption is not feasible, would the inclusion of the obligation in records, such as account opening documents, material parts of the bank's constitutive documents, website bulletins, etc. be acceptable in place of a formal confirmation? Separately, would the requisite acknowledgement be required, in retrospect, from overseas FIs which are currently already engaged?</p> <p><b>Question 4:</b></p> <p>We seek the MAS' clarification on the type of "information systems" required from CMS licensees to maintain. For instance, would Microsoft Excel spreadsheets with links to the</p>
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		<p>deposit-taking FIs and custodians' websites to access the required information suffice, or automated custom-made programs be required? We will be concerned if the MAS expects the CMS licensee to enhance its existing back office accounting system, where customers' transactions are currently recorded, to create additional fields for the information proposed under clause 3.12. Such system enhancements incur additional resource and costs, and we question the usefulness if the information on the financial institution or custodian, and the nature of the respective accounts, are easily retrievable from other records, such as those maintained under the requirements of Section 102 and Regulations 39(1) and (2) to maintain record of each customer's transactions in its back office accounting system.</p> <p>Alternatively, could the information systems be part of the system by service provider or global custodian? We would appreciate if greater clarity could be provided on this.</p> <p>Additionally, while we understand the intent to protect customer's moneys and assets, the practical implementations to meet regulatory requirements will have to be taken into consideration as well. It would be challenging for FIs to comply with Paragraph 3.12(c) to assess the material differences between the customer's moneys and asset protection regime in Singapore and other jurisdictions, and the potential consequences of such differences. Instead of stipulating the material differences, it would be more practicable for FIs to disclose a broader statement to highlight counterparty risks relating to overseas FIs instead.</p> <p>We would also like to confirm that in the case where deposit-taking FIs and custodians are appointed by clients, the requirement for CMS licensees to maintain such information systems would not be imposed on the CMS licensees as they would not have access to the deposit-taking FIs and custodians' records.</p> <p><b>Question 5:</b></p> <p>We would like to seek clarity on the definition of customer in this question. For Singapore Authorised CIS, custodians are appointed by the trustee whereas for other discretionary fund management business, the client usually appoints its own custodian. Given that the fund manager has no part in the</p>
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		<p>selection of custodian(s) they should be not be in the scope of the proposed disclosure requirements.</p> <p>In relation to funds sold to retail investors, we are of the view that FMCs, which handle clients' moneys and assets, should only be required to provide the disclosures to the distributors (which the FMCs directly engage) and not be required to provide the disclosures to the end retail clients (which are engaged by the distributors). If it is not possible to remove the requirement, we would like to seek MAS' confirmation that the required disclosures can be provided in fund documents/prospectuses. Additionally, we would like to clarify if it is necessary to extend the requirements to staff who participates in staff investment schemes, given the schemes are part of employee benefits.</p> <p>We would like to highlight that existing information systems used by FIs would most probably not be able to store or process detailed custodian information, i.e. types of segregation ("omnibus" or "individual") at all levels of the holding chains and the effects of the segregation on customer's ownership rights. Additionally, there will be difficulties trying to mitigate the differences in the moneys and asset protection regimes in different countries as the CMS licensee may not have the knowledge of the material differences between the protection regimes in Singapore and that jurisdiction. Legal advice may be required and resources need to be committed to then present the information in a clear and simple language to the customer.</p> <p>The above raises the cost of compliance and we question the benefit of this additional disclosure in assisting the customer to understand the associated risks. The customer will be inundated with an additional document on top of other standard documents, such as Specified Investment Product disclosures, product prospectus, FATCA/CRS declaration, Customer Knowledge Assessment, and account terms and conditions. If the disclosure requirement is introduced, we are of the view that exemptions should be granted for the following situations:</p> <p>a) Customer's assets and moneys deposited with financial institutions or custodians which are regulated by the MAS. These financial institutions and custodians are subject to prudential standards set by the MAS and there is also</p>
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		<p>adequate protection prescribed under the Securities and Futures Act (SFA).</p> <p>b) Customers who qualify as institutional investors and/or accredited investors. Unlike retail customers, these investors are professionals armed with adequate knowledge and ability to protect their own interests.</p> <p>Should the requirements be introduced, we would also like to seek the MAS' guidance on what is deemed as 'material differences' from the perspective of asset protection. Also, how long in advance should the disclosure be made to the CMS licensees' customers? Will it be a requirement for disclosures to be made retrospectively to existing customers? We would appreciate if the MAS could provide a standard disclosure to CMS licensee.</p> <p>Additionally, we would like to clarify if customer's money held with clearing house as covered under SF(LCB)R Regulation 19, as well as OTC derivatives which are centrally cleared, would be within the scope of this proposal.</p> <p><b>Question 6:</b></p> <p>We would like to clarify if all CMS licensees holding customer's moneys and assets' refers to custodians and deposit-taking FIs.</p> <p>In practice, daily computation and reconciliation is performed for all moneys and assets deposited in trust accounts or custody accounts. However, daily reconciliation is not a standard practice for contractual rights, such as FX open positions. As such, we respectfully suggest that the MAS does not proceed with the proposal to extend the daily computation requirement under Regulation 37 of the LCB Regulations to all CMS licensees holding customer's moneys and assets.</p> <p>If the above proposal is not feasible, we would like to request that the MAS provides a list of information required for daily computation.</p> <p><b>Question 7:</b></p> <p>We seek the MAS' clarification on whether there is a need for CMS licensees to provide such risk disclosure to and obtain consent from its customers retrospectively.</p>
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16	Lymon Pte Ltd	<p><b>Question 4:</b></p> <p>Regarding Paragraph 3.12, we respectfully propose for CMS licensees to “have access to”, rather than “maintain”, the information systems that can promptly produce, both in normal times and in the event of resolution or insolvency,</p>

		<p>salient information pertaining to their customer's moneys and assets, and are assured that the controls surrounding such systems are operating effectively.</p> <p><b>Question 5:</b></p> <p>Regarding Paragraph 3.14 (b), for example, if a CMS licensee places customer's moneys or assets with a foreign financial institution (Jurisdiction A) which subsequently places part of the moneys or assets with another foreign financial institution in a different jurisdiction (Jurisdiction B), we respectfully seek clarification whether the CMS licensee needs to disclose the material differences and potential consequences of such differences for both Jurisdictions A and B as compared to Singapore.</p>
17	Nomura Singapore	<p><b>General comments:</b></p> <p>We envisage a substantial amount of time and resources is needed to implement MAS' proposed changes and would appreciate if there is a transition period of at least 12 months for CMS licensees to comply with the revised requirements.</p> <p><b>Question 1:</b></p> <p>We agree with MAS' proposal.</p> <p><b>Question 2:</b></p> <p>We seek MAS' clarification on the following:</p> <ul style="list-style-type: none"> <li>○ Whether "deposit-taking financial institutions" includes brokers/ intermediaries with whom CMS licensees maintain account to keep customer's money and assets and enter into transactions on behalf of a customer.</li> <li>○ Whether the due diligence required under the LCB Regulations would apply if the deposit-taking financial institutions and custodians with whom CMS licensees maintain customer's trust accounts and custody accounts are related companies of CMS licensees; and</li> </ul> <p>In cases where the relationship with deposit-taking financial institutions and custodians are established at the Head Office/Group level, whether CMS licensees can rely on the due diligence conducted by the Head Office or any related</p>

	<p>company within the Group to satisfy the due diligence required under the LCB Regulations.</p> <p><b>Question 3:</b></p> <p>We agree with MAS' proposal.</p> <p><b>Question 4:</b></p> <p>We are of the view and would like to seek MAS' confirmation that the salient information on customer's money and assets which CMS licensees are required to produce under paragraph 3.12 of the Consultation Paper is at the omnibus level i.e. consolidated for all customers.</p> <p><b>Question 5:</b></p> <p>We seek MAS' clarification on whether CMS licensees can provide the disclosures required under paragraph 3.14 of the Consultation Paper in the agreement governing the customer's account.</p> <p><b>Question 6:</b></p> <p>We agree with MAS' proposal.</p> <p><b>Question 7:</b></p> <p>We agree with MAS' proposal.</p> <p><b>Question 8:</b></p> <p>We would like to seek MAS' clarification on the turnaround time for CMS licensees to response to such requests to be considered responding "reasonably promptly" to customers.</p> <p><b>Question 9:</b></p> <p>We agree with MAS' proposed changes.</p> <p><b>Question 10:</b></p> <p>We agree with MAS' proposal.</p>
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18	Securities Association of Singapore	<p><b>Question 1:</b></p> <p>(1) SFR 15(1) states that money received on account of customer does not include (i) money which is to be used to reduce the amount owed by the customer to the holder. Thus, logically contractual right (eg. accrual on mark-to-market basis) should also be determined on net basis considering the excess of unrealised gain over unrealised loss for the same customer. We suggest that MAS confirms this stance.</p> <p>(2) We also suggest that MAS provides further examples (if any, other than mark to market accruals on futures contracts &amp; contract for differences) on contractual rights.</p> <p>(3) We would also like to clarify the legal treatment / stance (ie. whether or not it is a statutory trust obligation) for the various nature of contractual rights.</p> <p>(4) Apart from MAS' proposal, we propose that MAS clarifies the definition of customers' moneys and assets to include all moneys and assets relating to the context where CMS licensee's employees, officers or representatives establish customer account relationships with the CMS licence holder and that such moneys and assets be allowed to be commingled with any other customers' moneys and assets.</p> <p>This clarification is sought in view that the current definition of "customer" in SFR 15(1) does not include an officer, an employee or a representative of the licensee. We would like to highlight that this definition in SFR 15(1) is not sufficiently clear or practical to cater for such customer account relationship as afore-mentioned and also particularly in situation whereby the account is in joint name of the customer and an officer / employee / representative of the licensee.</p> <p>(5) Furthermore, we propose that MAS expands SFR 19(b) as follows to include the words "or a member of an overseas securities exchange" to provide for trust moneys e.g. margins on stock options or extended settlement contracts executed in overseas securities exchange member to be maintained with such member.</p> <p>"The holder of a CMS licence to deal in securities may deposit moneys received on account of its customer with a clearing house or a member of a securities exchange or a member of</p>
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		<p>an overseas securities exchange for a purpose specified under the business rules and practices of the clearing house or securities exchange, as the case may be.”</p> <p><b>Question 2:</b></p> <p>(1) We propose that deposit-taking financial institutions (FIs) and custodians which fall under SFR 17(1) &amp; 27(1) be exempted from the proposed due diligence review requirement in view that these FIs and custodians are regulated by MAS.</p> <p>(2) We also propose that deposit-taking FIs and custodians outside Singapore which fall under SFR 17(2) &amp; 27(3) respectively be exempted from the proposed due diligence review requirement, where such FIs and custodians are appropriately licensed in a jurisdiction with regulatory regime including the customers’ moneys and assets regime which is comparable to Singapore’s standard.</p> <p>(3) We propose that the frequency of periodic reviews to assess whether the deposit-taking FIs / custodians (with whom the customer’s trust accounts and custody accounts are maintained) remain suitable should be determined by the CMS licensee based on risk considerations (e.g. based on amount of trust moneys / assets held with the deposit-taking financial institutions / custodians).</p> <p><b>Question 3:</b></p> <p>(1) We propose that MAS clarifies that acknowledgement is to be obtained as far as it is reasonably practicable to do so considering possible challenges e.g. non-response by the overseas FI.</p> <p>(2) We further propose that a one-time notification and acknowledgement at the point of establishing the relationship with the financial institution should suffice. For any applicable retrospective implementation of the proposal where there is pre-existing relationship, a one-time notification and acknowledgement which has the effect of covering all pre-existing accounts and subsequent accounts will do.</p>
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		<p><b>Question 4:</b></p> <p>(1) We suggest that MAS allows reasonable flexibility on the manner in which the information as required in 3.12(a), (b), (c), (d) is to be maintained by phrasing the proposal as “to require CMS licensees to maintain information systems or any other form of audit trail that can reasonably promptly produce, both in normal times and in event of resolution or insolvency, salient information pertaining to customer’s moneys and assets.”</p> <p>(2) It is onerous and not cost / resource efficient for each CMS licensee to maintain the information as required in 3.12(c), and legal opinion may need to be sought (not just one-off but from time to time for any updates).</p> <p>For a more value-added and efficient resource / information sharing with CMS licensees, appreciate that MAS could perform a comparative study of the customers’ protection regime in major recognised markets and provide licensees with guiding note / information on the markets with customers’ moneys and assets protection standards which are comparable to MAS, and highlight any other differences in such standards of relevance for licensees’ general reference.</p> <p><b>Question 5:</b></p> <p>(1) We foresee the following challenges and impracticalities in implementing MAS’ proposal on 3.14(b):-</p> <ul style="list-style-type: none"> <li>(i) the extent of time / cost / feasibility in doing a comparative study of the difference between the customers’ moneys / assets protection regimes in Singapore and foreign jurisdiction and the potential consequence;</li> <li>(ii) The challenge of monitoring changes in customers’ moneys and asset protection regimes in foreign jurisdiction;</li> <li>(iii) The subjectivity of interpretation on what is considered as material;</li> <li>(iv) The impracticality of advanced disclosure in certain time-critical situation eg. where there is an urgent</li> </ul>
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		<p style="text-align: center;">need to transfer the customer's moneys and assets from one foreign FI or custodian to another.</p> <p>We propose that MAS allows a one-time general / blanket disclosure to be made upfront through the agreement governing customer accounts to highlight the risks associated with differences in customer money / asset protection regimes and possible consequences of holding moneys and assets in foreign jurisdictions. We further propose that MAS provides specific clause/s as guiding reference on the one-time general / blanket disclosure.</p> <p><b>Question 6:</b></p> <p>(1) CMS licensees deal with multiple sub-custodians and the reconciliation of custody accounts is very much dependent on counterparty support and system capability. Where the CMS licensee provides custodial services in respect of units in collective investment schemes, reconciliation of unit holdings with the records of various fund managers (or their appointed registrars) in Singapore is usually manually done.</p> <p>The fund managers are also unable to provide daily statements of holdings.</p> <p>In addition, CMS licensees may not be able to obtain daily statements from foreign sub-custodians if there is no regulatory requirement for the latter to do so. Thus, we propose that MAS clarifies that the daily computation requirement be extended to all CMS licensees holding customer's moneys and assets as far as it is reasonably practicable for the licensees to do so; and that it is not the intent of this proposal to require reconciliation on daily basis.</p> <p><b>Question 7:</b></p> <p>(1) To facilitate common disclosure standard among licensees, we propose that MAS prescribe a standard risk disclosure content to all.</p>
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		<p><b>Question 8:</b></p> <p>(1) We are of the view that these are operational considerations best left to the CMS licensees to deal with and need not be enshrined in regulations.</p> <p>What is deemed as “reasonably prompt” may depend on the nature of requests eg how far back / long ago is the statement period as requested by the client.</p> <p><b>Question 9:</b></p> <p>(1) We are of the view that it will suffice for MAS to clarify the intent of 16(1)(b) and 26(2) with respect to retail clients rather than to disapply these Regulations to retail clients.</p> <p>(2) We suggest that MAS clarifies the intent of SFR 16(1)(b) and 26(2) is to protect customers’ interests (be it retail or institutional customers) by requiring licensees to obtain the customers’ specific / explicit consent where the licensees put the customers’ moneys / assets in any accounts other than trust / segregated accounts in the respective context in which the customers have directed the licensees to do so.</p> <p><b>Question 10:</b></p> <p>(1) We propose that MAS ensure a fair level playing field between CMS licensees and other licensees in its proposal.</p>
19	SG Securities (Singapore) Pte. Ltd.	<p><b>Question 1:</b></p> <p>Could the MAS kindly provide more information on what “contractual rights” may be included? Particularly on futures contracts as the mark to market valuations are already included, what other contractual rights could be added and how would a monetary value be calculated for them?</p> <p><b>Question 2 (a):</b></p> <p>Would MAS consider exemptions granted for deposit taking institutions that are in Singapore and already regulated by the MAS?</p>

		<p><b>Question 2 (b):</b></p> <p>Would MAS consider exemptions be granted for deposit taking institutions that are in Singapore and already regulated by the MAS?</p> <p><b>Question 3:</b></p> <p>We foresee a challenge obtaining the acknowledgement letter from overseas FIs as the foreign banks may not be forthcoming on providing the acknowledgement letter seeing as they are not administered by MAS.</p>
20	Shook Lin & Bok LLP	<p><b>General comments:</b></p> <p>We support the regulatory initiative.</p> <p><b>Question 1:</b></p> <p>We believe that this particular proposal might have been motivated by the decision of the High Court in MF Global Singapore Pte Ltd and others v Vintage Bullion DMCC [2015] 4 SLR 831.</p> <p>Since the release of the MAS consultation paper, the judgment of the High Court has now been partially reversed by the Court of Appeal in Vintage Bullion DMCC v Chay Fook Yuen and others [2016] SGCA 49. In the light of this development, we would urge MAS to reconsider its position or at least take into account the reasoning of the Court of Appeal when formulating the legislative amendments.</p> <p>While we understand and agree with the underlying policy rationale, we would however submit that it is important to maintain a rational distinction between customer money and customer assets. In the case of what the Court of Appeal's judgment refers to as Forward Value (being the sum that a customer is already legally entitled to from the CMS licensee, but for which the time for payment has yet to arrive), the Court of Appeal has already held that this is within the meaning of regulation 16 of the Securities and Futures (Licensing and Conduct of Business) Regulations. We feel that this ruling already accords with the MAS policy intent. To the extent that MAS desires to legislatively affirm the analysis of the Court of Appeal, we would endorse the proposal.</p>

		<p>However, we would also venture to submit that regulation 16 ought not to be further expanded to include other forms of contractual rights. As a matter of law, contractual rights are choses in action, and are not necessarily treated in the same way as money. So while the term customer money can be defined to include money as well as a legal right to paid money, we would urge MAS not to expand the meaning of the term beyond this, because to do so would be to conflate money with choses in action.</p>
21	Sidley Austin LLP	<p><b>General comments:</b></p> <p><b><u>Sidley Austin's comments:</u></b></p> <p>Thank you for the opportunity to provide feedback on the Consultation Paper. We set out below our comments, together with the comments which we have received from our fund manager clients. We have indicated accordingly the comments which are from our clients.</p> <p><b><u>Clients' comments:</u></b></p> <p>We note that the key policy intent of the proposals raised in this Consultation Paper is to protect customers in the event of the CMS licensee's insolvency. We agree that this is an important issue to address and we are supportive of this intent.</p> <p>However, these proposals are applicable to all Capital Markets Intermediaries ("CMIs") --- including brokers-dealers, custodians as well as fund managers. But the issues arising in the context of each of these CMIs are different, as are global industry norms for each of them. Hence the proposals should be applied in a manner that is relevant to each type of CMI and in a manner that recognises the way that the industry operates at a global level and not necessarily in a blanket way in relation to all CMIs. For example, a number of these proposals may be appropriate to be applied to custodians and prime brokers directly, but not to fund managers with the expectation that the fund managers then seek to impose them on the custodians/prime brokers --- which in most cases they will have no ability to do. In addition, to apply all these proposals indiscriminately to all CMIs, in particular fund managers, would place an undue burden on them and make fund</p>

		<p>managers in Singapore uncompetitive relative to their global (and regional) peers.</p> <p><b>Who is the “customer”?</b></p> <p>For the purposes of this Consultation Paper (and the guidelines/notice that will follow), “customer” should be the fund entities under the fund manager’s management and should not extend to the investors in those fund entities. To take an expansive approach to the definition of “customer” will be too onerous on fund managers and will make the daily operations of the Singapore fund management industry impractical and out-of-line with global industry practices. Our comments are provided on this basis.</p> <p><b>Do fund managers hold moneys and assets on behalf of their customers?</b></p> <p>It is globally understood and accepted that fund managers exercise authority to move moneys and assets on behalf of the funds they manage. This does not however mean that fund managers necessarily “hold” or otherwise “handle” their clients’ moneys and assets. Fund managers generally do not operate like banks and certain other CMIs which co-mingle customer moneys and assets with their own and/or rehypothecate customer moneys and assets as part of their funding operations.</p> <p>Notwithstanding the above, we think the answer to this question can be very clearly answered by assessing the structure of the accounts established by the fund manager for the fund entities it manages. Where the fund manager opens custodial and brokerage accounts in the names of the funds entities and all moneys and assets are either held/custodied in and moved to/from these accounts without at any time passing through accounts in the name of the fund manager itself (“<b>Structure 1</b>”), then there should be no question of the fund manager holding or handling customer moneys/assets in that set-up. Title to the moneys/assets in the accounts in Structure 1 continues to belong to the customers at all times (unless they pass to the bank/custodian as part of the normal course of the bank/custodian’s operations). However at no time do they pass to the fund manager despite the fund manager being able to exercise certain authority in relation to those moneys/assets. As such, there is no risk to the customers</p>
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		<p>in respect of the title to their moneys/assets in the event of an insolvency of the fund manager.</p> <p>Where such accounts are opened in the name of the fund manager and the moneys/assets in those accounts are allocated to the fund entities (“<b>Structure 2</b>”), we agree that it is arguable that there is some risk that, upon an insolvency of the fund manager, creditors of the fund manager may seek to make a claim against the moneys/assets of the fund manager. While we do not think such claims should prevail if there is clear documentary evidence of the fact that the moneys/assets were being held for the benefit of the fund manager’s customers and allocated as such (which, as we understand it, is the global norm), nevertheless we can see how Structure 2 may fall within the ambit of what the Authority is seeking to regulate in the consultation paper.</p> <p>As such, we would strongly encourage the Authority to advocate for fund managers to set up accounts on behalf of the fund entities that they manage in accordance with Structure 1. The proposals should only apply to fund managers who choose to continue with Structure 2.</p> <p><b>What does the above analysis mean in the context of the consultation paper?</b></p> <p>None of the proposals within this Consultation Paper should apply to fund managers employing Structure 1.</p> <p><b>There are a number of good elements in the proposals which should be adopted by the fund management industry as best practice.</b></p> <p>We think that certain elements within the proposals should be adopted by fund managers generally --- whether they employ Structure 1 or 2 --- as these do represent industry best practice. However these should not be part of the guidelines and/or notice to be issued pursuant to this Consultation Paper. These may be applied through a separate set of industry best practice guidelines.</p> <p><b>Question 1:</b></p> <p><b><u>Sidley Austin's comments:</u></b></p> <p>Comment:</p>
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		<p>(1) We note that the proposal seeks to expand the definition of "customer moneys" to the scenario where a CMS licensee enters into transactions "<u>on behalf of</u>" its customer.</p> <p>Could the Authority confirm that the proposal is only meant to apply where the CMS licensee enters into a trade "on behalf of" its customer by being the counterparty to the transaction who is legally entitled to the benefits of the contract / legally responsible for the discharging the obligations of the contract (the "<b>Legal Counterparty</b>")? This is in contrast with the scenarios where the CMS licensee's customer is the Legal Counterparty with the CMS licensee being named in the transaction only as an "<i>agent</i>" of its customer or "<i>acting for and on behalf of</i>" its customer (collectively the "<b>Agent Scenarios</b>").</p> <p>We respectfully submit that the proposal should not extend to the Agent Scenarios, as in these scenarios the CMS licensee's customer is the true counterparty to the transaction who is legally entitled to the benefits of the contract / legally responsible for discharging the obligations of the contract. Hence, there is minimal risk that the contractual rights of the customer will be deemed to "belong" to the CMS licensee in the event of the default, resolution or insolvency of the CMS licensee.</p> <p>(2) Could the Authority also clarify how it expects CMS licensees to "deposit" the value of the contractual rights from transactions which have not settled (and hence, the CMS licensee would not have "received" any moneys for the transaction, save for any margins required)? For example, is a CMS licensee required to use its own moneys to "top-up" the customer account to reflect any mark-to-market (MTM) accruals arising from change in value of positions in an open trade (e.g. a futures option)? Conversely, are CMS licensees allowed to withdraw monies from the customer account when the MTM accruals fall?</p> <p><b>Question 2:</b></p> <p><b><u>Sidley Austin's comments:</u></b></p> <p>We note that the proposal seeks to require CMS licensee to carry out due diligence on and periodic reviews of the deposit-</p>
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		<p>taking financial institutions and custodians which they have appointed to safeguard their customer's assets.</p> <p>Could the Authority confirm that this requirement is not intended to impose any statutory duty of care or fiduciary duty on the CMS licensees vis-à-vis their customers with regards to the selection and appointment of the deposit-taking financial institutions and custodians? If so, we suggest that the Authority clarifies this in its Response to Feedback Received or FAQ, to avoid any potential litigation by customers on this point.</p> <p><b><u>Clients' comments:</u></b></p> <p>We agree that due diligence and periodic reviews should be conducted by fund managers on deposit-taking FIs and custodians regardless of the account set-up. For these purposes, we have removed the word "trust" and applied this to customers' accounts and custody accounts generally. The due diligence and periodic reviews should encompass accounts maintained with sub-custodians and other applicable account structures to the extent such information is necessary and available to CMS licensees.</p> <p><b>Question 3:</b></p> <p><b><u>Sidley Austin's comments:</u></b></p> <p>Regulations 18 and 28 of the LCB Regulations requires, amongst other things, a CMS licensee to obtain confirmation from a deposit-taking financial institution or custodian that all moneys or assets deposited in the trust or custody account are "<i>held on trust</i>" by the CMS licensee for its customer, and that the account is designated as a "<i>trust account</i>".</p> <p>The underlying assumption of Regulations 18 and 28 of the LCB Regulations is that the deposit-taking financial institution or custodian recognises the concept of a "trust". However, this concept is a common law concept originating from the English courts of equity, and it may not be necessarily recognised in every jurisdiction, particularly civil law jurisdictions.</p> <p>We anticipate that a CMS licensee may face difficulties in obtaining the required acknowledgement in jurisdictions that do not recognise the trust concept and thus be unable to appoint a custodian in such jurisdiction. Hence, we respectfully</p>
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		<p>submit that for overseas financial institutions, it should suffice if a CMS licensee obtains acknowledgement from such financial institutions that:</p> <ul style="list-style-type: none"> <li>(i) In the case of customer moneys, that: <ul style="list-style-type: none"> <li>(a) the account in question is designated as the CMS licensee's customer's or customers' account (the "<b>Customer Account</b>"), which shall be distinguished and maintained separately from any other account in which the CMS licensee deposits its own moneys; and</li> <li>(b) the overseas financial institution cannot exercise any right of set-off against the moneys deposited with the overseas financial institution in the Customer Account for any debt owed by the CMS licensee to the overseas financial institution</li> </ul> </li> <li>(ii) In the case of customer assets, that: <p>the account in question is designated as the CMS licensee's customer's or customers' account, which shall be distinguished and maintained separately from any other account in which the CMS licensee deposits its own assets.</p> </li> </ul> <p><b>Question 4:</b></p> <p><b><u>Sidley Austin's comments:</u></b></p> <ul style="list-style-type: none"> <li>(1) <b>Application of the requirement:</b> Can the Authority confirm that this proposal is only meant to apply if a CMS licensee receives moneys or assets on the account of its customer (i.e. it will not apply if a CMS licensee does <u>not</u> receive any moneys or assets on the account of its customer)?</li> <li>(2) <b>Paragraph 3.12(b) of the Consultation Paper:</b> Can the Authority clarify what is meant by the "<i>effects of the segregation</i>"?</li> <li>(3) <b>Paragraph 3.12(c) of the Consultation Paper:</b> Can the Authority clarify to what extent is the CMS licensee required to obtain information on the applicable laws of the foreign jurisdiction? More specifically, it might be an unduly onerous requirement for CMS licensees to obtain</li> </ul>
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		<p>legal advice / opinions on the applicable foreign laws relating to protection of customer moneys and assets, particularly where the custodian may have numerous sub-custodians in different jurisdictions. We respectfully submit that a more reasonable approach would be for a CMS licensee to obtain a list of the jurisdictions in which its customer's moneys and assets may be held.</p> <p><b>Question 5:</b></p> <p><b><u>Sidley Austin's comments:</u></b></p> <p>Can the Authority confirm that this proposal is only meant to apply if a CMS licensee receives moneys or assets on the account of its customer (i.e. it will not apply if a CMS licensee does <u>not</u> receive any moneys or assets on the account of its customer)?</p> <p><b><u>Clients' comments:</u></b></p> <p>We agree with paragraph 3.14(a) of the Consultation Paper. This should be part of the risk disclosure in the fund entity's private placement memorandum ("<b>PPM</b>"). For this purpose however, if Structure 1 is being used, the risk disclosure should relate to how customers' moneys/assets are held and not that the fund manager is holding them. The latter would only be the case in Structure 2.</p> <p>Paragraph 3.14(b) of the Consultation Paper on the other hand is too onerous for any fund manager to address and requires the fund manager to constantly be aware of any changes in the holding structure at the foreign custodian as well as changes to the laws/regulations that apply to the foreign custodian but which do NOT apply to the fund manager. As such, we think the MAS should address this issue by requiring disclosure in the PPM relating to who the fund entity's custodian(s) is/are, where they are located and whether they are licensed and if so, by which authority. Investors can then do their own due diligence, as they must in all cases in any event, on this disclosure and determine for themselves if they are comfortable investing in the particular fund.</p> <p><b>Question 6:</b></p> <p><b><u>Sidley Austin's comments:</u></b></p>
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		<p>Can the Authority confirm that this proposal is only meant to apply if a CMS licensee receives moneys or assets on the account of its customer (i.e. it will not apply if a CMS licensee does <u>not</u> receive any moneys or assets on the account of its customer)?</p> <p><b>Question 7:</b></p> <p><b><u>Sidley Austin's comments:</u></b></p> <p>Can the Authority confirm that this proposal is only meant to apply if a CMS licensee receives assets on the account of its customer (i.e. it will not apply if a CMS licensee does <u>not</u> receive any assets on the account of its customer)?</p> <p><b>Question 8:</b></p> <p><b><u>Clients' comments:</u></b></p> <p>We agree that this should be a market standard.</p>				
22	State Street Bank and Trust Company	<p><b>General comments:</b></p> <p><b>Feedback pertaining to specific paragraphs in the Consultation Paper:</b></p> <table border="1" data-bbox="579 1234 1385 1783"> <thead> <tr> <th data-bbox="579 1234 762 1272">Para</th> <th data-bbox="762 1234 1385 1272">Feedback</th> </tr> </thead> <tbody> <tr> <td data-bbox="579 1272 762 1783">Paragraph 3.4 to 3.6 – Due Diligence on Third Party Custodians</td> <td data-bbox="762 1272 1385 1783"> <p><i>Q: In a global operating model, CMS licensee/EFIs may, with prior consent of its customers, place its customers' assets with its Head Office, subsidiaries of its Head Office, and/or affiliates located outside Singapore. Would such arrangements be exempted from the due diligence requirements?</i></p> <p><i>Q: Does a CMS licensee/EFI need to conduct due diligence on sub-custodians that are appointed directly by the custodian whom the CMS licensee/EFI is placing its customers' assets with?</i></p> </td> </tr> </tbody> </table> <p><b>Question 2 (b):</b></p> <p>Q: Will MAS be providing further guidance on the benchmark that CMS licensees/EFIs should be using when evaluating</p>	Para	Feedback	Paragraph 3.4 to 3.6 – Due Diligence on Third Party Custodians	<p><i>Q: In a global operating model, CMS licensee/EFIs may, with prior consent of its customers, place its customers' assets with its Head Office, subsidiaries of its Head Office, and/or affiliates located outside Singapore. Would such arrangements be exempted from the due diligence requirements?</i></p> <p><i>Q: Does a CMS licensee/EFI need to conduct due diligence on sub-custodians that are appointed directly by the custodian whom the CMS licensee/EFI is placing its customers' assets with?</i></p>
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		<p>deposit-taking financial institutions/custodians against these factors, in particular its financial condition and market reputation?</p> <p><b>Question 3:</b></p> <p>Q: In a global operating model, CMS licensee/EFIs may, with prior consent of its customers, place its customers' assets with its Head Office, subsidiaries of its Head Office, and/or affiliates located outside Singapore. Would such arrangements be exempted from the requirements under Regulations 18 and 28?</p> <p>Q: Sub-custody agreements would usually contain set-off rights. What is MAS' expectation for such agreements in relation to part (iii) of this requirement?</p> <p><b>Question 5:</b></p> <p>Q: In a business set up where customers' moneys/assets are held by global custodian with agent banks located in numerous jurisdictions, it may be onerous for CMS licensees/EFIs to include the proposed disclosures in agreements with their customers. Given that accredited institutional and expert investors possess sufficient knowledge and experience to evaluate the risks, would MAS consider applying the disclosure requirements to only CMS licensees/EFIs who deal with retail investors?</p> <p>Q: Would MAS be providing CMS licensees/EFIs with a transition period to review and revise existing customer contracts to include the proposed disclosures? Would CMS licensees/EFIs be expected to provide customers with advance notice for subsequent changes? Do CMS licensees/EFIs need to obtain written acknowledgement from their customers?</p> <p>Q: Would disclosing the changes in the offering document of a CIS be sufficient to meet this requirement? Otherwise, what is MAS' expectation from a custody perspective?</p> <p><b>Question 7:</b></p> <p>Q: In a business set up where customers' moneys/assets are held by global custodian with agent banks located in numerous jurisdictions, it may be onerous for CMS licensees/EFIs to include the proposed disclosures in agreements with their</p>
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		<p>customers. Given that accredited institutional and expert investors possess sufficient knowledge and experience to evaluate the risks, would MAS consider applying the disclosure requirements to only CMS licensees/EFIs that deals with retail investors?</p>
23	United Overseas Bank Limited	<p><b>General comments:</b></p> <p><b>Question 1:</b></p> <p><b><u>UOB's response:</u></b></p> <p><b><u>Feedback on definition of "Intermediary" and distinction of Customer's Moneys and Customer's Assets"</u></b></p> <p>The responsibilities of financial intermediaries for 'customer's moneys and assets' vary according to the roles of different financial intermediaries and asset type. For e.g., cash deposits held with a bank generally give rise to a general claim against the bank in the event of insolvency, and therefore do not benefit from protections (except for deposits protected under SDIC) otherwise afforded to safe-kept assets.</p> <p>To the extent that customer's moneys and assets are received by the Bank as counterparty to a trade and not an intermediary, these rules may not apply. For e.g., collateral and margins received on repurchase (repo and reverse repo transactions) which, are not, by definition, uncleared derivatives.</p> <p>There needs to be clarification regarding assets that are moved via title transfer, such as re-hypothecated assets and repurchase transactions (repo and reverse repos.) Are these considered customer's assets?</p> <p>The Bank recommends greater clarity in the definitions for "intermediary" and "customer's moneys and assets".</p> <p><b>Question 2:</b></p> <p><b><u>UOB's response:</u></b></p> <p><b><u>Feedback for Question 2a:</u></b></p>

		<p>Feedback for para 3.5: There are differences when an entity is acting as a bank and customer’s assets are held on the bank’s balance sheet (the customer is a creditor of the bank) versus acting as trustee where customer’s assets are segregated and held off-balance sheet (the customer is a beneficiary of the assets held by the trustee). Hence, clarity on scope of “third party custodian” and “trust account” is recommended.</p> <p>Feedback for para 3.6 Where customer’s moneys are placed with a third party, the resulting obligations must reflect the appropriate nature of underlying relationships. The proposed obligation would be too onerous in those jurisdictions where an intermediary is not transferring counterparty assets on its own but rather to custody the counterparty’s moneys following the counterparty’s decision to trade in that jurisdiction.</p> <p>This raises the concern as to whether custodians risk becoming fiduciaries, advising customers directly on asset protection issues. This would allow counterparties in effect to avoid appropriate responsibility for the risks of their investments. This type of analysis should be completed by the counterparty/client (at least with respect to institutional clients).</p> <p>It may also not be appropriate to diversify or to mitigate insolvency risks by placing customer’s moneys and assets with more than one third party deposit-taking financial institution or custodian. While this may make sense for a broker-dealer or Central Clearing Counterparty (CCP), it may not be the case for safekeeping services provided by custodians. Global custodians establish and maintain an extensive network of sub-custodian and correspondent bank relationships to safe-keep assets on behalf of their institutional investor customers in various jurisdictions where the customers may wish to invest. It is quite uncommon for a single customer’s assets to be dispersed across multiple local providers. There is a far greater likelihood of an operational error in processing of a corporate action or tax reclamation if client assets were to be dispersed across multiple local providers with different Central Securities Depository (CSD) account numbers, internal reporting processes and control systems. The proposal should clarify the scenario where global custodians enter into a contingency agreement with another provider to permit the rapid transfer of client assets as market or provider circumstances demand.</p>
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		<p><b><u>Feedback for Question 2(b):</u></b></p> <p>Clarification is required on the expected frequency of monitoring requirements. A requirement for very frequent updates will be impractical and onerous, and will likely result in increased costs for customers.</p> <p><b>Question 3:</b></p> <p><b>Feedback for Question 3:</b></p> <p>The bank has concerns on the enforceability of this proposal where overseas financial institutions that do not fall under the purview of MAS and hence, are not obliged to comply with providing the acknowledgement. This would require inter-governmental agreements to be in place for the inter-jurisdiction requirements to be enforceable.</p> <p><b>Feedback on Paragraph 3.9:</b></p> <p>The bank has a wholly owned subsidiary that is an approved Future Commission Merchant (FCM) and will be regulated by MAS as CMS License Holder. As required under CFTC regulations all of subsidiary's moneys and assets will be deposited with overseas financial institutions. Under CFTC Regulations 1.20, available at <a href="http://www.ecfr.gov/cgi-bin/text-idx?SID=33aba239982766dda3b7eb753d4e6d92&amp;mc=true&amp;n ode=se17.1.1_120&amp;rqn=div8">http://www.ecfr.gov/cgi-bin/text-idx?SID=33aba239982766dda3b7eb753d4e6d92&amp;mc=true&amp;n ode=se17.1.1_120&amp;rqn=div8</a>), the subsidiary will be required to obtain acknowledgment letters from institutions holding customer funds as per the format prescribed under Annexure A to the aforementioned CFTC regulation. Contents of the said acknowledgement letter are largely in line with the requirements pursuant to Regulation 18 and 28 of the LCB Regulations.</p> <p>Can the subsidiary rely on acknowledgement letter obtained as per the format prescribed under CFTC Regulations, for the purpose of compliance with the proposed Regulations 18 and 28 of the LCB Regulations?</p>
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		<p><b>Feedback on Paragraph 3.9:</b></p> <p>The bank has a wholly owned subsidiary that is an approved Future Commission Merchant (FCM) and is regulated by MAS as CMS License Holder.</p> <p>The subsidiary may face operational hurdles to obtain segregation acknowledgement from overseas Clearing Brokers. Clearing Brokers generally maintain one single “client/ trust account” for the purpose of receipts/ disbursements of funds from/to all of its clients including Futures Commission Merchant (“FCM”) clients such as the subsidiary. In such set ups generally end clients of FCM and the related account of FCM are treated as one single account and maintained in the “client/trust account”. “Client/ trust account” is held/ maintained segregated from FI’s House monies. In such a scenario, the subsidiary have observed a case where clearing broker have commented that they cannot sign on the proposed Segregation letter as the contents are not in line with the arrangement.</p> <p><b>Question 4:</b></p> <p><b><u>UOB’s response:</u></b></p> <p><b><u>Feedback for para 3.12</u></b></p> <ul style="list-style-type: none"> <li>• What is MAS’ expectation for ‘prompt’ delivery of information on clients’ monies and assets? There could be implications to systems design and associated costs with different expectations.</li> <li>• In addition, there is already coverage under the Recovery and Resolution Plan on this requirement in the event of resolution. There is also other various existing information reporting by financial intermediaries, some of which can be duplicative or unnecessarily broad in scope. The Bank recommends the careful consideration of a cost–benefit analysis before the imposition of new reporting requirements.</li> <li>• For customer clearing of listed and OTC derivatives on Central Clearing Counterparties (CCPs), customer funds are invested by clearing members in bulk, subject to the relevant regulatory restrictions and parameters designed to protect client assets. Any return on the investment of</li> </ul>
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		<p>customer's funds is a matter to be agreed between the customer and its clearing member. Customers, in turn, have legally protected rights with respect to the equivalent value of the assets they have transferred to the clearing member and the value of any return on investment agreed with the clearing member, but neither with respect to the specific assets they have transferred nor any specific assets resulting from investment. Intermediaries must be able to rely on representations about the status of accounts from sub-custodians or others.</p> <p>The proposal will lead to higher compliance costs for custodians.</p> <p><b><u>Feedback for para 3.11</u></b></p> <p>Exchanges generally do not facilitate or recognize tagging and attribution of specific assets to individual clients when a client posts margins in the form of collaterals such as US Treasuries or Singapore government bonds and these get pass-through to the affiliated clearing house. Generally such records of customer's assets are maintained at the intermediary level.</p> <p>Would the intermediary's records be sufficient be sufficient basis for compliance to this proposed requirements?</p> <p><b>Question 5:</b></p> <p><b><u>UOB's response:</u></b></p> <p>The Bank is concerned that custodians are put in a position to assume a higher standard of care than their role and hence, liability, with respect to assets held in foreign jurisdictions, where the only reason that such assets are being held in those jurisdictions could be the counterparty's sole discretion and determination to enter into such transactions.</p> <p>Clarity is needed on a suitable measure of "risk" in "foreign" jurisdictions, required for the enhanced disclosure requirements around the risks of foreign jurisdictions.</p> <p>Further, assessment of material risks and risk mitigating factors from placing assets into foreign jurisdictions requires time to research and assess, and conducting such analysis may not be practical for some entities considered as an</p>
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		<p>intermediary. It would follow that customers should be given time to fully understand and appropriately analyze the information that is required to be disclosed to them at the time they invest an asset in foreign jurisdictions, such as the disclosures about individual jurisdictions and the nature of law in those jurisdictions. This may be practically impossible and undesired by the customer.</p> <p>Custodians typically receive information about transactions in foreign jurisdictions only after they have been executed. Therefore, they may not be able to provide in a timely manner the requirement to "disclose in advance to customers". Any information that the intermediary must provide to the customer can be given ex post since the investor doesn't take the intermediary's advice or approval for investment in given securities (issued in given foreign jurisdictions).</p> <p><b>Question 6:</b></p> <p><b><u>UOB's response:</u></b></p> <ul style="list-style-type: none"> <li>• While this is broadly consistent with prevailing industry practice among global custodians, there are cases where due to local market capabilities and client inactivity, reconciliations may occur on a less frequent basis (e.g. weekly). The Banks recommends an adjustment to this proposal so that there is flexibility for less frequent reconciliations with Central Securities Depositories (CSDs) as appropriate, relative to industry or market practice.</li> <li>• The Bank would also appreciate if flexibility is extended to licensees which do not have daily transactions and provide exemption to the daily computation requirement.</li> </ul> <p><b>Question 7:</b></p> <p><b><u>UOB's response:</u></b></p> <p>It is important to understand the reasons why charges / pledges and other encumbrances are used. In the case of custodians, Charges may be used as a means of managing exposures associated with the investment activities of institutional investor clients or their designated asset managers. As an example, overdrafts in customer accounts caused by a failed securities transaction or the non-receipt of a cash payment are secured via a charge on the fund's assets.</p>
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		<p>Since customer's overdrafts are not structured as traditional loans, they do not otherwise have the benefit of protections contained in standard loan documentation. As such, without a charge/pledge, custodians would be subject to inappropriate and uncompensated proprietary risks. This could, in turn, have broad implications for the efficiency of financial markets, as custodians may be unable or unwilling to assume the risk of transactional fails and other routine operational matters, with further implications for overall systemic risk.</p> <p>The Bank requests for the benefits to be considered in appropriate circumstances of charges/pledges and other encumbrances for the mitigation of risk.</p> <p><b>Question 10:</b></p> <p><b><u>UOB's response:</u></b></p> <p>Agree with the proposal. As mentioned in the earlier feedback, where EFIs are counterparties to transactions with the bank, the Bank's obligations under this proposed CP should be correspondingly not applicable too.</p>
24	WongPartnership LLP	<p><b>General Comments:</b></p> <p>As we are a law firm, the majority of our comments below focus on legal and regulatory issues that we think could potentially arise from the proposed enhancements to the regulatory requirements on protection of customer's moneys and assets. Generally speaking, we do not have any feedback to questions pertaining to commercial or operational matters as we are not in a position to comment on such matters.</p> <p><b>Question 1:</b></p> <p>We are supportive of this proposal. For clarity and consistency with the language in Regulation 15(2) of the LCB Regulations, the expanded definition of "customer moneys" (which is intended to cover cash assets and not non-cash assets) should refer to "moneys receivable pursuant to contractual rights arising from transactions" entered into by the CMS licensee on behalf of a customer (such as futures contracts) or with a customer (such as contracts for differences). Without this clarification, the current proposed expanded definition could be interpreted to include, for example, non-cash collateral</p>

		<p>belonging to the customer (like securities which might also be the subject matter of any repurchase agreement between the customer and the CMS licensee) which are currently intended to be covered by the statutory definition of “customer’s assets”.</p> <p>In addition, it would be helpful if MAS could provide guidance on when the moneys receivable under such contractual rights should be deposited and segregated in the trust account pursuant to Regulation 16(b) of the LCB Regulations. It would in practice be impossible to physically segregate and deposit moneys that have yet to accrue to a customer into an account, and at such point in time, only legal segregation on the books of the CMS licensee would be possible.</p> <p>It may be more practical to require the CMS licensee to physically segregate the moneys receivable under contractual rights arising from transactions only when such moneys have accrued (and thus can be quantified and monetised) to the customers. In this regard, we note the observation made by the Singapore High Court<sup>1</sup> recently that a statutory trust over monies arises upon the “<i>mere accrual of moneys to customers, without more</i>” and customers can rely on the statutory trust in the interim period before the accrued moneys are physically segregated and transferred to the trust account for customers’ monies.</p> <p><b>Question 2:</b></p> <p>We are supportive of the proposals to require CMS licensees to conduct due diligence on, and periodic reviews of, the deposit-taking financial institutions and custodians with whom they maintain customer’s trust accounts and custody accounts.</p> <p>However, it may be difficult for CMS licensees to make this assessment and to consider, amongst other things, the legal requirements relating to the holding of customer’s moneys and assets of an overseas deposit-taking financial institution and/or custodian. Each CMS licensee is therefore likely to require the assistance of separate foreign legal counsel in order to carry out this due diligence process on an overseas deposit-taking financial institution or custodian.</p> <p>To reduce the costs that may be incurred by the CMS licensees, MAS may wish to consider obtaining and maintaining a</p>
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		<p>directory of legal opinions from key foreign jurisdictions, addressing (1) the regulatory status of deposit-taking financial institutions or custodians in that jurisdiction and (2) the legal requirements in that foreign jurisdiction, relating to the holding of customer's moneys and assets that could adversely affect customer's rights during business as usual and in the event of the default or resolution of the CMS licensee or the deposit-taking financial institution or custodian.</p> <p>Additionally, based on our own experience, some civil law jurisdictions do not recognise the concept of a trust, or it is legally challenging to set up a trust account in such jurisdictions where it is not of common usage. Would MAS be prepared to consider or recognise legally equivalent arrangements? Otherwise, at the outset, all deposit-taking financial institutions and custodians in these jurisdictions would already not be suitable.</p> <p><b>Question 3:</b></p> <p>It is possible that overseas financial institutions in civil law jurisdictions may not recognise the common law concept of a trust and a trust account, and thus would not be able to provide the requisite confirmation that the accounts in which the customer's moneys and assets are deposited are designated as customer's trust accounts</p> <p>Under such circumstances, one alternative could be for such an overseas financial institution to provide the following confirmations instead:</p> <ul style="list-style-type: none"> <li>(i) moneys or assets deposited in the account will be held for the benefit of the customer, until such time the CMS licensee informs the overseas financial institution otherwise, and that the account will be designated as such accordingly;</li> <li>(ii) moneys or assets deposited in that account will be distinguished and segregated from all other moneys or assets held by the CMS licensee (or any other person) with the overseas financial institution; and</li> <li>(iii) the overseas financial institution will not use the moneys and assets in that account to set-off against any debt owed by the CMS licensee to the financial institution.</li> </ul>
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		<p>Foreign legal opinions should also be obtained to confirm the legal feasibility and robustness of the abovementioned arrangement and whether the customer's moneys and assets would be protected in the event of the insolvency of the overseas financial institution.</p> <p><b>Question 4:</b></p> <p>We have no comments on this as this is more operational in nature and we anticipate that market participants will provide practical feedback directly to MAS to what are realistic steps and costs to operationalise this requirement.</p> <p><b>Question 5:</b></p> <p>We are supportive of the proposed disclosure requirements, which would provide transparency to customers on the manner in which the CMS licensees hold customer's moneys and assets and the attendant risks. Such disclosures should be provided to customers at the time of account opening, and updates on the disclosures (regardless of whether the disclosures have changed) should also be provided to customers on a periodic basis.</p> <p><b>Question 6:</b></p> <p>We are supportive of the proposed disclosure requirements, which would provide transparency to customers on the manner in which the CMS licensees hold customer's moneys and assets and the attendant risks. Such disclosures should be provided to customers at the time of account opening, and updates on the disclosures (regardless of whether the disclosures have changed) should also be provided to customers on a periodic basis</p> <p><b>Question 7:</b></p> <p>We are supportive of this proposal. We would however like to seek MAS' clarification on whether the proposal for CMS licensees to provide risk disclosure to, and obtain the requisite consent from, their customers prior to using their customers' assets would apply to the mortgages, charges, pledges and hypothecations that are currently permitted under Regulation 34 of the LCB Regulations, or if the proposal would only apply to uses of customers' assets that fall outside the ambit of Regulation 34 of the LCB Regulations. If it is MAS' intention for</p>
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		<p>these requirements to apply to the mortgages, charges, pledges and hypothecations under Regulation 34 of the LCB Regulations, then the appropriate transitional provisions relating to the application of these new requirements to existing mortgages, charges, pledges and hypothecations which have already been created under the current Regulation 34 of the LCB Regulations should be provided for.</p> <p>MAS may also wish to consider setting out clearly, by way of subsidiary legislation or otherwise, the matters to be addressed in this risk disclosure statement, or in the alternative, to provide for a statutory form of this risk disclosure statement to be used by CMS licensees.</p> <p><b>Question 8:</b></p> <p>We have no comments on this as this is more operational in nature and we anticipate that market participants will provide practical feedback directly to MAS to what are realistic steps and costs to operationalise this requirement.</p> <p><b>Question 9:</b></p> <p>We note MAS' concerns as set out in paragraphs 3.22 and 3.23 of the Consultation Paper. We are of the view that customer protection may be better achieved if the language of Regulations 16(1)(b) and 26(2) is amended such that CMS licensees may still be allowed to deposit customer's moneys and assets in such other account directed by the customer, regardless of whether the customer is a retail customer or otherwise, provided that the CMS licensee has been so directed by the customer in the manner as statutorily provided for. While this may be a slight administrative hassle, this would ensure that: (1) the manner and circumstances in which customers may direct the financial institutions are clearly set out and financial institutions would not be able to go against the intent of the regulations; and (2) the optionality remains available for all types of customers including retail customers.</p> <p><b>Question 10:</b></p> <p>Our responses set out in Questions 2 to 9 above would similarly apply when the proposed enhancements in paragraphs 3.4 to 3.23 in respect of customer's assets are extended to EFIs.</p>
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25	Respondent A	<p><b>Question 3:</b></p> <p>In relation to obtaining an acknowledgment from overseas financial institutions confirming (i) the accounts in which the customer’s moneys and assets are deposited are designated as customer’s trust accounts, (ii) the moneys and assets are held on trust for the customers and segregated from the CMS licensees’ own moneys and assets, and (iii) the domestic financial institution will not use the moneys and assets in those accounts to set-off against any debt owed by the CMS licensee to the domestic financial institution, we would like to understand MAS’ expectation &amp; guidelines if the overseas FIs refuse to provide such acknowledgement, especially with respect to existing custodian counterparties.</p> <p><b>Question 7:</b></p> <p>We would like to clarify if these proposed requirements are applicable if the licensee only deals with Accredited Investors.</p> <p><b>Other matters</b></p> <p>We would like to clarify if the scope of customers’ assets follows the definition under Reg 15 of Securities and Futures (Licensing and Conduct of Business) Regulations which include Government securities and certificates of deposits, that are beneficially owned by a customer of the CMS holder. Accordingly, please clarify the scope of proposed enhancements under this Consultation Paper include certificate of deposits. We wish to clarify because certificates of deposits issued by a bank or finance company whether situated in Singapore or elsewhere are excluded from the definition of “securities” under Section 2 of the SFA.</p>
26	Respondent B	<p><b>Question 4:</b></p> <p>For those assets that the CMS licensees held with a custodian, to what extent should the disclosure on sub-custodian be? Does the bank need to show the ultimate underlying depositories or sub-custodians in the record?</p>

		<p><b>Question 5:</b></p> <p>Can MAS clarify the level of disclosure and whether it is sufficient just for the disclosure of the ultimate underlying depositories or sub-custodians or is there a requirement to disclose the entire holding chain.</p> <p><b>Question 10:</b></p> <p>(a) The bank welcomes the proposal to dis-apply the LCB Money Rules to EFIs which will bring Singapore in line with the position of major jurisdictions such as Hong Kong.</p>
27	Respondent C	<p><b>Question 2:</b></p> <p>Banks and any other deposit-taking financial institutions (“DTFI”s) would already have been reviewed and assessed to be suitable to undertake banking business by the local licensing regulator before they were granted licences to conduct such business and also periodically reviewed by these regulators for the same purpose. CMS licensees cannot be expected to be able to do a better job than the local regulators on assessing the suitability of a bank or other DTFI, as the local regulator would have the authority to demand whatever information and documents it might require for such purpose, unlike a CMS licensee. So long as the CMS licensee is opening the trust account to safe-keep its customer’s money with a licensed bank / DTFI in countries where the banking regulations and regulatory regimes are of a reputable standard, such due diligence should not be required to be undertaken by the CMS licensee.</p> <p>In particular:</p> <p>(1) It should also not be necessary for the CMS licensee to consider the legal requirements or market practices relating to the holding of customer’s moneys and assets that could adversely affect the customer’s rights during business as usual and in the event of default or resolution of the CMS licensee, the DTFI or custodian. The CMS licensee can only open trust accounts to safe-keep its customer’s money and assets. By their very nature, the money or assets deposited in such accounts are trust property and therefore earmarked and segregated from the DTFI’s / custodian’s own assets and there would be no risk to the assets in the event of insolvency of the</p>



		<p>CMS licensee, the DTFI or the custodian. If the account has no such characteristics, then it is not a trust account. The issue would only be of concern if the deposit is placed with a bank or DTFI located in a jurisdiction that does not recognise the concept of a trust.</p> <p>(2) It is not practical to require the CMS licensee to assess the “financial condition” of the DTFI or custodian. This role is already taken up by independent credit rating agencies. It is also not practical to require CMS licensees to undertake a thorough review and assessment of a DTFI’s financial statements, which would include the evaluation of any off-balance sheet transactions or the level and treatment of its non-performing loan portfolio. The independent credit rating agencies are better placed to undertake such a review and assessment.</p> <p>(3) It is not practical to require the CMS licensee to assess the “market reputation” of the DTFI or custodian. Established banks have long histories and many have been guilty of some form of regulatory breaches or participated in legal settlements with no admission of liability over the course of their long history. How much weight should such regulatory incidents be given and taint the market reputation of a DTFI? Such an assessments would be so subjective, they would not be useful as a regulatory guideline.</p> <p>(4) It is not practical to require the CMS licensee to assess the “protection (or lack thereof) attendant upon the regulatory status” of the DTFI or custodian. It is not clear what this means. If this refers to the risks of making a deposit with a bank in a jurisdiction with a questionable regulatory regime, then it is easier to state which regulatory regimes should be avoided by CMS licensees when choosing a DTFI / custodian. If this is meant to cover any failings of insolvency laws of the regulatory regime in which the DTFI / custodian is located, then it would require a very lengthy and extensive external legal opinion from a law firm to cover all the potential legal ramifications that insolvency of the DTFI or custodian would have on an account placed with it. This risk would already be addressed by the requirement to open a trust account and by taking into account the credit ratings given by the independent credit rating agencies. CMS licensees would typically already have their own in-house policies on the assessment of counterparty credit risks.</p>
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		<p>very lengthy and extensive legal opinions from both Singapore and foreign lawyers. Such legal opinions may also not be easily understandable to the layperson and CMS licensees would run the risk of inaccurately paraphrasing the legal opinion to make it more easily understandable.</p> <p>For unit trusts, as the custody cash and FDFX accounts are opened by the trustees, any disclosure requirements will fall on the trustees and not the fund managers.</p> <p><b>Question 9:</b></p> <p>The definition of “retail customers” should only include natural persons i.e. individuals and exclude non-natural persons investing into unit trusts.</p>
28	Respondent D	<p><b>General comments:</b></p> <p>Respondent D generally appreciates and supports the enhanced protection of customer’s moneys and assets. However, as a CMS Licensee, we would like to emphasize that the enhanced regulation should further clarify that the enhanced requirements do not apply to a scenario when a CMS Licensee does not own the contractual relationship with the relevant custodian or has very limited control on the custody accounts which the client opened and maintained by their discretion.</p> <p>This scenario exists when a CMS Licensee which acts as an investment manager is contracted by a client for separately managed account services. In such case, the client would separately appoint its own custodian for setting up custody account(s) and instruct the appointed custodian to work with the appointed investment manager who provides the investment management service. The investment manager will not be maintaining for the client any trust account and the client will deposit their moneys and assets with/from the appointed custodian of their own accord. As such, the investment manager will not be in the position to carry out due diligence and periodic review on the custodian directly engaged by the client as the investment manager will only have limited access to the custody accounts by way of giving investment instructions according to the mandate.</p>

		<p>The appointed custodian will be responsible for opening cash and securities accounts for the holding client's moneys and assets. The appointed investment manager will receive the settlement instructions from the custodian for providing it to the investment manager's trading counterparties for securities transactions that have been entered on behalf of the client according to the investment mandate. No client's money and securities will be received through the investment manager in the transactions.</p> <p>The custodian would be responsible directly for reporting, safekeeping and segregating the client's moneys and assets according to a custodian agreement which they entered as specified by the client.</p> <p>We seek the Authority to clarify in its response to the Consultation whether the regulatory requirements on protection of customer's moneys and assets will apply to the circumstances as described above.</p>
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