RESPONSE TO FEEDBACK RECEIVED

May 2017

Response to Feedback Received – Policy Consultation on Regulatory Framework for Intermediaries Dealing in OTC Derivatives Contracts and Marketing of Collective Investment Scheme

MAS
Monetary Authority of Singapore

Contents

1 Preface

1.1 On 3 June 2015, MAS issued a consultation paper inviting comments on the regulatory framework for intermediaries dealing in over-the-counter ("OTC") derivatives contracts ("OTC intermediaries"), execution-related advice, and marketing of collective investment schemes ("CIS").

1.2 The consultation closed on 3 July 2015. MAS would like to thank all respondents for their feedback. The list of respondents is in Annex A.

1.3 MAS has carefully considered the feedback received on the proposed regulatory framework for OTC intermediaries and the proposals relating to marketing of CIS. Comments received that are of wider interest, together with MAS' responses, are set out in the ensuing sections of this paper. OTC intermediaries refer to (i) entities which hold a Capital Markets Services ("CMS") licence to deal in OTC derivatives contracts ("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 submit a notification to MAS that they are dealing in or advising on OTC derivatives contracts under the SFA or Financial Advisers Act ("FAA") respectively.

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

2 Admission Criteria for CMS Licensees

2.1 MAS proposed to subject applicants for a CMS licence to deal in OTC derivatives contracts to the admission criteria set out in MAS' Guidelines on Criteria for the Grant of a Capital Markets Services Licence other than for Fund Management (SFA4-G01) (the "Licensing Guidelines"), save for the requirement relating to corporate track record. In relation to track record, MAS proposed to require applicants dealing in OTC derivatives contracts to meet the minimum five year corporate track record criterion only if they serve retail (i.e. non-accredited, institutional or expert) investors. MAS also proposed to apply the corporate track record criterion to intermediaries dealing in exchange-traded derivatives contracts.

2.2 Most respondents supported the proposals. One respondent sought clarification on the applicability of the corporate track record criterion to entities applying for a CMS licence to deal in multiple types of capital markets products, including OTC derivatives

contracts. Another respondent asked whether an entity's track record of dealing in OTC derivatives contracts with retail customers could be considered as relevant for the purpose of satisfying the track record requirement applicable to dealing in exchange-traded derivatives contracts.

MAS' Response

2.3 MAS will proceed with the proposal to subject CMS licensees dealing in OTC or exchange-traded derivatives contracts to the admission criteria set out in the Licensing Guidelines, except for the minimum five year corporate track record criterion. Instead, CMS licensees dealing in OTC or exchange-traded derivatives contracts or any other type of capital markets products will be required to meet the minimum five year corporate track record only if they serve retail investors. MAS will assess on a case-by-case basis whether an entity's experience in dealing in a particular type of capital markets products can be counted towards meeting the corporate track record requirement for dealing in other types of capital markets products.

3 Business Conduct Requirements

Business Conduct Requirements Under the Securities and Futures (Licensing and Conduct of Business) Regulations ("SF(LCB)R")

(a) Risk Management and Controls

3.1 MAS proposed to subject OTC intermediaries which are CMS licensees to Regulation 13 of the SF(LCB)R, which requires a CMS licensee to have in place proper risk management systems and controls. Most respondents were supportive of the proposal.

MAS' Response

3.2 MAS will proceed with the proposal to subject OTC intermediaries to Regulation 13 of the SF(LCB)R. Additionally, to ensure that the chief executive officer and directors of an OTC intermediary take responsibility for ensuring that the intermediary complies with Regulation 13 of the SF(LBC)R, MAS will apply Regulation 13A of the SF(LCB)R to OTC intermediaries.

(b) Advertisements

3.3 To ensure that the advertising materials published or circulated by OTC intermediaries present a fair and balanced view of the OTC derivatives contracts, MAS

proposed to extend Regulation 46 of the SF(LCB)R [1] to OTC intermediaries. Most respondents agreed with the proposal.

MAS' Response

3.4 MAS will proceed to extend Regulation 46 of the SF(LCB)R to OTC intermediaries.

(c) Risk Disclosure

3.5 MAS proposed to require all intermediaries dealing in capital markets products to provide risk disclosure for the capital markets products (including OTC derivatives contracts) which they offer to customers. Specifically, intermediaries dealing in capital markets products would be required to disclose to their customers (i) whether they are acting as an agent or principal; and (ii) the material risks of the capital markets products. This requirement would not be applicable when intermediaries deal with their related entities or other licensed financial institutions ("FIs"). MAS further proposed that intermediaries be required to furnish the risk disclosure documents and receive the acknowledgement in writing from the customer prior to entering into a contractual relationship. Where appropriate, MAS may prescribe the specific form of the risk disclosure document provided to retail investors.

3.6 Some respondents suggested that the risk disclosure requirement should not apply when intermediaries deal with (i) accredited investors ("AIs"); (ii) expert investors ("EIs"); and (iii) institutional investors ("IIs"), as these classes of non-retail investors are generally more sophisticated and familiar with the risks associated with trading in capital markets products.

3.7 Several respondents commented that it is not necessary for intermediaries to provide a separate risk disclosure for capital markets products which are accompanied by disclosure documents provided by the issuer, e.g. product highlights sheets, given that such documents serve the purpose of highlighting the key risks of the products. A few respondents requested for MAS to provide standardised risk disclosure templates for derivatives contracts, similar to the MAS-prescribed Form 13 for futures contracts. Respondents also sought clarifications on whether (i) the risk disclosure requirements should be applied at the transaction or product level; and (ii) a high level product

[1] Regulation 46 of the SF(LCB)R stipulates that advertising materials must not contain any inaccurate or misleading statement or presentation, or any exaggerated statement or presentation that is calculated to exploit an individual's lack of experience or knowledge.

disclosure document that encompasses all investment products provided during account opening would suffice.

3.8 Several respondents commented that it would be impractical for intermediaries to obtain customers' acknowledgement of the risk disclosure prior to execution of transaction, given the time sensitivity in the execution of some transactions. A few respondents also requested for clarity on whether the risk disclosure requirements would apply to existing customers.

MAS' Response

3.9 Taking into account the feedback received, MAS will not apply the risk disclosure requirements to transactions that are undertaken with non-retail investors (i.e. AIs, EIs or IIs[2]). MAS agrees that such investors are generally more sophisticated and familiar with the risks associated with trading in capital markets products. The risk disclosure requirements will also not apply where the intermediaries deal with their related entities.

3.10 MAS agrees that it is not necessary for intermediaries to provide a separate risk disclosure if there are existing disclosure documents (which set out the risks of the products) made available to investors. Accordingly, intermediaries may rely on such disclosure documents (e.g. product highlights sheets). Intermediaries will need to provide or refer customers to such disclosure documents.

3.11 Separately, as the risks may differ from one product to another, it is impractical for MAS to prescribe a standard risk disclosure for all types of contracts. Where there are established industry formats for risk disclosure, intermediaries may adopt such formats as long as they contain disclosure on (i) the material risks of the product; and (ii) whether the intermediaries are acting as a principal or agent. Risk disclosures should be made at the product level.

3.12 MAS would also like to clarify that intermediaries may provide the risk disclosure and obtain customers' risk acknowledgement at the time of account opening.

3.13 Additionally, MAS will remove the requirement for the acknowledgement by customers of the risk disclosure in Form 13 under the SF(LCB)R to be witnessed, so that such acknowledgements by customers may be furnished by electronic means.

[2] IIs include FIs licensed in Singapore or overseas.

(d) Handling of Customer's Moneys and Assets

3.14 MAS proposed to extend Parts III and IV[3] of the SF(LCB)R, which set out requirements governing the handling and treatment of customers' moneys and assets, to OTC intermediaries that deal in centrally-cleared OTC derivatives contracts. These requirements serve to protect customers against the default of the OTC intermediaries by requiring them to deposit customers' moneys or assets in a trust or custody account. Where the OTC intermediaries offer individual client segregation to customers, they would have to disclose to customers the costs associated with and the level of protection accorded by the individual client segregation vis-à-vis omnibus segregation. They would, however, not be required to deposit the moneys or assets of customers who have opted for individual client segregation in a trust account separate from other customers who have not opted so. OTC intermediaries are also required to furnish statements of accounts to customers on a monthly basis. The statement of accounts will have to provide information on, amongst others, the status of every asset in the OTC intermediary's custody held for the customer and the movement of every asset of the customer.

3.15 Several respondents sought clarification on whether the requirement to place customers' collateral in a custody account would preclude an OTC intermediary from obtaining customers' collateral in the form of a title transfer for centrally cleared OTC derivatives transactions. The respondents highlighted that in relation to centrally cleared OTC derivatives transactions, the market practice in the wholesale segment is for the OTC intermediary to obtain collateral via a title transfer. In this regard, the requirement for customers' collateral to be placed in a trust account would result in significant cost implications.

3.16 In relation to the required disclosures for the offering of individual client segregation, a few respondents asked about the level of details and information required.

MAS' Response

3.17 MAS would like to clarify that the proposal to extend the trust and custody account requirements under Part III of SF(LCB)R to OTC intermediaries is not intended to change the market practice for OTC intermediaries operating in the wholesale segment, where the clientele type typically comprises IIs, EIs or corporate AIs. Where OTC intermediaries obtain collateral from such customers by way of title transfer, ownership (i.e. title) of the collateral passes from the customers to the OTC intermediaries. As the

[3] SF(LCB)R Regulation 39 on Books of Holder of CMS Licence; Regulation 40 on Provision of Statement of Account to Customers; Regulation 45 on Securities Borrowing and Lending.

customers no longer have ownership of the collateral, the OTC intermediaries will not be required to place the collateral in a custody account.

3.18 In relation to individual client segregation, MAS expects the OTC intermediaries to disclose sufficient information to enable their customers to make an informed choice. The disclosure should minimally include (i) the additional fees that a customer would have to bear should the customer opts for individual client segregation; and (ii) a description of the main implications of the respective levels of segregation offered in an insolvency situation (e.g. the extent to which the assets or moneys deposited by the customer will be protected from claims from other customers).

3.19 Separately, MAS notes that it is industry practice for OTC intermediaries to conduct periodic reconciliations with their counterparties who are IIs. As 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), MAS will allow OTC derivatives intermediaries to perform periodic reconciliations in lieu of furnishing statement of accounts to counterparties who are IIs.

(e) Record Keeping

3.20 MAS proposed to require OTC intermediaries to maintain the following information, identifiable by transaction and counterparty:

a) Customer identification information and other documents relating to the establishment of business relation;
b) Information necessary to reconstruct the OTC derivatives transactions, including:
    (i) Pre-execution information;
    (ii) Execution information; and
    (iii) Post-trade information;
c) Payments and interest received on derivative transaction;
d) Daily value of each outstanding derivative transaction;
e) Daily initial and variation margin payable or receivable;
f) Daily value of all collateral held by or posted by OTC intermediaries, including transfer of collateral; and
g) All charges against and credits to each counterparty's account (e.g. funds deposited/withdrawn, unrealised gains/losses).

3.21 MAS also proposed that OTC intermediaries maintain the records for a specified retention period.

3.22 Several respondents were concerned about the need to retain pre-execution information, noting that such information is typically conveyed by customers via various channels (e.g. phone, SMS, WhatsApp, WeChat, Yahoo, Bloomberg) and disseminated numerous times in a day, but do not necessarily result in actual trades. It would be operationally onerous to store all pre-execution information, especially oral communication and costly to keep the records for the specified retention period. Two respondents commented that conducting daily valuation of all outstanding OTC derivatives transactions would be operationally challenging. Respondents also requested for greater clarity on the details required for pre-execution, execution and post-execution information.

3.23 On the scope of requirement, a few respondents asked if the record keeping requirements are applicable to the proprietary trades of the OTC intermediaries. Some respondents also sought clarification on how the terms "termination of business relation" and "completion of OTC derivatives transactions" should be interpreted.

MAS' Response

3.24 Consistent with the current recordkeeping requirements, OTC intermediaries will be required to maintain their books and records for not less than five years. Customer information and transaction records must be retained for not less than five years after the completion of transaction or termination of the customer business relation as the case may be. MAS would like to clarify that the term "completion of OTC derivative transaction" refers to the point of time when the position in the transaction is closed out either by cash settlement or physical delivery, and there is no further outstanding obligation pertaining to that transaction. The term "termination of business relation" refers to the point where the OTC intermediary no longer has any outstanding derivatives transaction with a counterparty and decides not to continue its business relation with that counterparty.

3.25 On pre-execution information (i.e. paragraph 3.20(b)(i)), while MAS recognises the operational challenges faced by the industry, pre-execution information may be important for dispute resolution. On balance, MAS will not proceed with the proposal to require OTC intermediaries to retain pre-execution information. However, OTC intermediaries are expected to have in place a proper framework to manage customer disputes, and such a framework should enable the maintenance of proper audit trail of transactions for the purposes of dispute resolution. On the specific records which should be kept in respect of execution and post-execution information, respondents may refer to the examples provided in subparagraphs 3.16(b)(ii) and 3.16(b)(iii) of the consultation paper respectively.

3.26 MAS agrees that not all OTC derivatives contracts are valued on a daily basis (e.g. bespoke OTC derivatives contracts). As such, MAS will not require the records in paragraphs 3.20(d), (e) and (f) to be maintained daily. Instead, OTC intermediaries will be required to maintain such records upon occurrence of the relevant events (e.g. whenever initial or variation margins or collateral are called and posted or received).

3.27 The record keeping requirements apply to all OTC derivatives transactions undertaken by an OTC intermediary, including proprietary trades of the intermediary.

Risk Mitigating Requirements ("RMRs") for Non-Centrally Cleared Derivatives

3.28 MAS proposed to require OTC intermediaries to execute trading relationship documentation ("TRD"), trade confirmation and portfolio reconciliation and compression when dealing in non-centrally cleared OTC derivatives contracts. MAS also proposed to require OTC intermediaries to report promptly material disputes, i.e. those exceeding $25 million that remain unresolved beyond 15 business days.

3.29 Respondents' comments were centred on the following areas:

a) Lack of reciprocity of counterparties: The performance of trade confirmation and portfolio reconciliation requires participation from the counterparty to the trade. Many respondents were concerned that where counterparties are not regulated by MAS (e.g. overseas licensed FIs or non-FIs), they may not be able to compel such counterparties to comply with the requirements (e.g. to execute a two-way confirmation for trades with an overseas licensed FI or perform portfolio reconciliation periodically with the overseas licensed FI).

b) Difficulties in meeting the proposed confirmation deadlines: On trade confirmations, respondents indicated that they may require longer than the proposed (T+1) or (T+2) period to execute trade confirmations, especially for complex, bespoke or highly structured transactions as there are currently no industry standard templates.

c) Preference for MAS not to prescribe terms: Several respondents requested MAS not to prescribe the terms required to be included in trade confirmation and portfolio reconciliation. They highlighted that there are already well established industry practices for trade confirmation of many types of OTC derivatives transactions, such as FX derivatives. They also commented that some of the proposed terms are not applicable for the transaction or not

commonly present in standard market trade confirmation. It would be costly and operationally burdensome for entities to reconfigure their systems to comply with the requirement.

MAS' Response

3.30 MAS notes the industry's feedback that OTC intermediaries will face practical challenges in complying with the more specific requirements (e.g. confirmation timelines and terms to be confirmed). Given the foregoing, MAS will modify the RMRs in the following manner:

a) MAS will require OTC intermediaries to establish policies and procedures to execute TRD, trade confirmation and portfolio reconciliation, and to regularly assess the need for, and to the extent appropriate, engage in portfolio compression, when dealing in non-centrally cleared OTC derivatives contracts. On disputes resolution and reporting, OTC intermediaries will be required to agree with their counterparties the mechanism or process for determining when a discrepancy in the material terms or valuation is considered a dispute; and resolving that dispute as soon as practicable. MAS will retain the reporting requirement for material disputes.

b) MAS will not hard-code the more granular requirements (e.g. trade confirmation timelines, terms to be confirmed, portfolio reconciliation frequencies). Instead, MAS will set out in the form of guidelines the following:

   (i) OTC intermediaries should perform a two-way confirmation and periodic portfolio reconciliations with counterparties that are MAS-regulated FIs. Where the counterparties are overseas FIs, OTC intermediaries should send a trade acknowledgement (i.e. one way confirmation), and have written policies and procedures to facilitate a two-way confirmation and perform periodic portfolio reconciliations with overseas FIs.

   (ii) On the trade confirmation timelines, MAS recognises that the time needed to perform trade confirmation depends on the complexity of the transaction. For standardised trades, OTC intermediaries should aim to complete the confirmation within the suggested timelines mentioned in the consultation paper (i.e. (T+1) or (T+2) depending on the product). For bespoke transactions or transactions with a new

counterparty, trade confirmation could take place over a longer timeframe.

(iii) MAS will provide examples of material terms to include in the TRD, trade confirmation, and portfolio reconciliation.

3.31 Consistent with the approach that MAS has taken for margin requirements for non-centrally cleared OTC derivatives transactions, MAS will adopt a phase-in approach for the implementation of RMRs, taking into account market developments in the region. In the first phase, which is expected to be effected in 1Q 2018, MAS will subject banks, merchant banks and finance companies to the RMRs. MAS will further assess market and international regulatory developments before deciding when to phase-in non-bank FIs.

3.32 Respondents also requested for clarifications on other more granular aspects of the RMRs. The ensuing paragraphs set out MAS' clarifications on these matters. Where appropriate, MAS will include these clarifications in the guidelines.

(f) Trading Relationship Documentation

3.33 Several respondents sought clarification on the type of documentation that can be used as TRD. Some respondents commented that there is industry standard legal documentation that counterparties typically use when executing written TRD. A few other respondents suggested that MAS allow the use of trade confirmation for single, one-off transactions.

MAS' Response

3.34 MAS recognises that there is currently industry standard legal documentation that counterparties may use when executing TRD. MAS will consider such documentation to be sufficient if it includes all material terms governing the trading relationship and is executed in writing or through other equivalent non-rewritable, non-erasable electronic means.

3.35 For single, one-off transactions, MAS agrees that TRD may take the form of a trade confirmation if it includes all material rights and obligations of the counterparties to the transaction and all material terms of the transaction.

(g) Trade Confirmation

3.36 Several respondents enquired on the form in which confirmation can be executed (e.g. via daily customer statements or ISDA confirmation documentation) and whether the confirmation can be provided via electronic means.

MAS' Response

3.37 MAS does not intend to prescribe the form in which a trade confirmation is executed. OTC intermediaries may rely on industry standard documentation provided it includes the material terms of the transaction and ensures legal certainty of the transaction.

(h) Portfolio Reconciliation and Dispute Reporting

3.38 On the frequency of portfolio reconciliation, several respondents asked how often an assessment should be conducted to determine the frequency of reconciliation. One respondent sought clarification on whether third party agents or service providers can perform reconciliation on behalf of the intermediary.

3.39 On dispute reporting, several respondents sought clarifications on how the $25 million reporting threshold should be computed. A few other respondents asked for more details on the format of reporting, information required to be reported, the party responsible for reporting, and whether intermediaries need to report a dispute if the disputed amount falls below $25 million after 15 business days. One respondent sought clarity on the term "remain unresolved" and asked whether disputes that garner non-responses from counterparties despite repeated attempts to contact the counterparty have to be reported.

MAS' Response

3.40 In order to determine the frequencies at which portfolio reconciliation should be performed, OTC intermediaries can consider the number of outstanding transactions that they have with each counterparty at the end of each calendar quarter. OTC intermediaries which intend to rely on third party agents or service providers to perform reconciliation on their behalf should observe the MAS Guidelines on Outsourcing.

3.41 On dispute reporting, the $25 million threshold relates to the market value or net present value of the transaction that is in dispute. An unresolved dispute refers to a dispute for which the counterparties have not mutually agreed on a solution. Where the counterparties are less responsive, OTC intermediaries should nevertheless attempt to

establish with these counterparties if the disputes are genuine before reporting to MAS. MAS will not prescribe the reporting format. Where both counterparties are OTC intermediaries, the counterparties may agree between themselves on the party which will be reporting a dispute to MAS. An OTC intermediary should update MAS when the dispute is resolved.

(i) Portfolio Compression

3.42 A number of respondents supported the proposal for OTC intermediaries dealing in non-centrally cleared derivatives contracts to undertake portfolio compression where appropriate. They agreed that portfolio compression is a useful risk-reducing practice. Some respondents sought clarification on what constitutes portfolio compression, and whether this could be undertaken on a unilateral, bilateral or multilateral basis. Respondents also asked what would be considered as "where appropriate", and whether there should be a threshold, which may be based on the number of outstanding contracts with a counterparty before portfolio compression must be undertaken. Some respondents commented that compression may not be suitable in all circumstances. For instance, the compression of swap contracts with different characteristics into a new contract that bridges the original swaps would cause the parties to incur high transaction costs.

3.43 Respondents also highlighted that small players could face challenges, such as costs in conducting compression given that there are very few service providers that offer such service.

MAS' Response

3.44 MAS considers portfolio compression as an exercise between market participants which have a sizeable portfolio of OTC derivatives transactions with one another, to replace economically-equivalent transactions by reducing the number of transactions in and/or notional value of the portfolio. Portfolio compression should have the effect of reducing certain risks, such as credit risk and operational risk for the participants. Portfolio compression can be conducted on a bilateral or multilateral basis.

3.45 MAS is not prescribing any threshold for triggering a portfolio compression. MAS agrees with the feedback that portfolio compression may not be practical or suitable under certain circumstances. For instance, a portfolio that is directional may not provide much room for the parties to undertake offsetting transactions. Compression services may also not be available for certain products or offered to certain participants. It is for

the OTC intermediary to assess and determine the most appropriate manner and with whom to carry out a portfolio compression.

(j) Other RMRs-related Feedback

3.46 Some respondents sought clarification on the applicability of the RMRs to intragroup transactions (e.g. with related entities) and transactions with entities that are not the booking entity for the transaction (e.g. a trading entity).

3.47 There were also requests for MAS to recognise market participants' compliance with equivalent foreign regulatory regimes as sufficient for compliance under Singapore laws, so that they would not be subject to duplicative requirements.

MAS' Response

3.48 Intragroup transactions give rise to counterparty risks between the different entities within the group. As such, the RMRs are equally applicable to intragroup transactions. The RMRs will be imposed on the OTC intermediary which is the booking entity for the transaction.

3.49 On the request that MAS recognise industry participants' compliance with equivalent foreign regulatory regimes as sufficient for compliance under Singapore laws, MAS will adopt an outcome-based approach in assessing equivalence, with a focus on whether the RMRs in the foreign jurisdiction achieve the same regulatory objectives as the RMRs in Singapore.

4 Capital and Financial Requirements

4.1 MAS proposed to subject CMS licensees dealing in OTC derivatives contracts to a minimum base capital of $5 million if they are members of a designated clearing house, and $1 million if otherwise. MAS also proposed to extend the risk-based capital ("RBC") requirements under the Securities and Futures (Financial and Margin Requirements) Regulations ("SF(FMR)R") to CMS licensees dealing in OTC derivatives contracts, other than those dealing only with non-retail investors.

4.2 Some respondents suggested lowering or having a tiered approach to the capital requirements for certain entities (e.g. those that deal only in commodities or those that do not hold customers' funds or assets or carry customers' positions), so as not to excessively burden intermediaries with limited activities such as inter-dealer brokers. On RBC requirements, one respondent enquired on the difference in the requirements for CMS licensees dealing with non-retail investors in OTC derivatives contracts and other

derivatives contracts, while another suggested that MAS consider ensuring a level playing field between CMS licensees dealing only with non-retail investors, and those dealing with both retail and non-retail investors.

MAS' Response

4.3 With regard to the suggestions for a lower or tiered approach to capital requirements for certain types of entities, MAS had consulted on certain proposals to exempt entities which meet certain conditions (e.g. entities which do not take on any principal position, do not accept, handle or hold any customer's position, margin, account or money, and which deal only with AIs, EIs or IIs; entities which deal in commodity OTC derivatives contracts only with AIs, EIs or IIs) from holding a CMS licence for dealing in OTC derivatives contracts, and responded in November 2016[4] that we will be proceeding with the proposals. Such exempt entities are not subject to the base capital or RBC requirements under the SF(FMR)R.

4.4 Where an entity does not meet the conditions for licensing exemption, and is required to hold a CMS licence, the RBC requirements are already calibrated to take into account the risk profile of the CMS licensee. A licensee with a higher risk profile will be required to hold a larger amount of financial resources.

4.5 MAS will thus proceed with the proposed base capital requirements. In addition, to ensure consistency between CMS licensees dealing in OTC derivatives contracts only with non-retail investors and those dealing with both non-retail and retail investors, we will extend the RBC requirements to all CMS licensees dealing in OTC derivatives contracts, regardless of their clientele type.

5 Representative Notification Requirement

5.1 MAS sought views on the proposals to extend the representative notification requirement to persons who act as representatives for dealing in or advising on OTC derivatives contracts, and to grandfather persons who are currently dealing in or advising on OTC derivatives contracts in relation to the minimum academic qualifications and the Capital Markets and Financial Advisory Services examination requirements. Respondents were generally supportive of the proposals. Several respondents requested for details such as whether entities will be required to re-submit notifications to MAS to re-classify the regulated activities of their representatives and how representative notifications

[4] Refer to MAS' Response (dated 7 November 2016) on Proposed Amendments to the Securities and Futures Act

submitted under the current regime but not yet reflected on the public register upon commencement of the new regime will be treated.

MAS' Response

5.2 MAS will implement the proposals relating to the representative notification requirement as set out in the consultation. MAS will engage the industry on the operational details to migrate their representatives to the new regime separately.

6 Transitional Arrangements[5]

6.1 MAS proposed a one-year transitional period, from the date that the new regime is effected ("T"), for entities which are currently dealing in or advising on OTC derivatives contracts to submit the relevant applications or notifications to MAS. Entities which submit the relevant applications or notifications within the transitional period would be allowed to continue with their OTC derivatives activities until such time that MAS decides on the application or notification.

6.2 Respondents were generally supportive of the proposed transitional arrangements, including the one-year transitional period. One respondent sought clarification on whether holders of a commodity broker's licence under the Commodity Trading Act ("CTA") will be required to renew their commodity broker's licence until such time their CMS licences are issued. Some respondents also enquired about the transitional period to comply with the new business conduct requirements. These respondents requested for a reasonable transitional period to review existing documentation and effect system enhancements where necessary to meet the new business conduct requirements.

MAS' Response

6.3 This set of requirements on regulation of OTC intermediaries will be implemented by way of amendments to the regulations under the SFA and FAA. MAS notes that other enhancements (e.g. enhancements to the requirements on protection of

[5] As highlighted in the consultation paper, the transitional arrangements do not apply to entities and their representatives who commence dealing in or advising on OTC derivatives contracts only after the new regime comes into effect. Such entities and their representatives may only commence their OTC derivatives activities after their CMS or FA licence applications or notifications (as the case may be) have been approved or published by MAS.

customer's moneys and assets[6], enhancements to the requirements for contracts for differences[7]) will be also be incorporated into the regulations at the same time. Given the numerous new requirements that will be issued at the same time, MAS has decided to provide a two-year transitional period to comply with this set of licensing and business conduct requirements for dealing in OTC derivatives contracts. This means that existing entities dealing in or advising on OTC derivatives contracts will have two years from T, which is estimated to be in early 2018, to submit the relevant applications or notifications for their OTC derivatives activities. Entities will be allowed to continue carrying on their existing OTC derivatives activities until such time that MAS approves or rejects their application or two years from T, whichever is earlier.

6.4 For business conduct, existing entities will also have two years from T to comply with this set of business conduct requirements for their OTC derivatives activities. This is to allow entities sufficient time to make the necessary system, process or documentation changes. Entities whose applications or notifications are approved by MAS within the two-year period will also have until the end of that period to comply with the new business conduct requirements.

6.5 As for holders of a commodity broker's licence under the CTA, MAS and International Enterprise Singapore intend to complete the transfer of the regulatory oversight of commodity derivatives from the CTA to the SFA within two years from T. For entities currently holding only a commodity broker's licence under the CTA, the transitional arrangements set out in paragraphs 6.3 and 6.4 will apply to them (i.e. two years from T to submit their CMS licence applications and comply with this set of business conduct requirements). On the other hand, for entities concurrently holding a commodity broker's licence under the CTA and a CMS licence which covers dealing in financial derivatives under the SFA, their existing CMS licence will be migrated to a CMS licence which cover dealing in both financial and commodity derivatives[8]. In the interim (i.e. before approval or migration of the CMS licence), such entities will continue to be regulated under the CTA and required to comply with the conduct and capital requirements under the CTA.

[6] Refer to MAS' Response Paper (dated 18 July 2016) on Enhancements to Regulatory Requirements on Protection of Customer's Moneys and Assets

[7] Refer to MAS' Response Paper (dated 14 March 2014) on Review of Regulatory Framework for Unlisted Margined Derivatives Offered to Retail Investors

[8] MAS will engage these entities separately on the operational details.

7 Paragraph 9 of the 3rd Schedule to the SFA ("Para 9") and Paragraph 11 of the 1st Schedule to the FAA ("Para 11")

7.1 MAS sought views on the proposal to extend the application of Para 9 and Para 11[9] to the activities of dealing in and advising on OTC derivatives contracts. A number of respondents asked whether MAS intends (i) to grandfather existing business arrangements in respect of dealing in and advising on OTC derivatives contracts; or (ii) provide a timeframe for OTC intermediaries to seek MAS' approval under Para 9 and Para 11 for their existing business relationships and whether they can continue with such relationships until MAS decides on their applications.

7.2 A group of respondents also asked about the approval criteria for Para 9 and Para 11 arrangements in respect of dealing in and advising on OTC derivatives contracts. The respondents highlighted the existing criteria[10] , which include a requirement for the foreign related corporation to be subject to proper supervision by its home regulatory authority for the activities carried out under the arrangement, may not be practicable given that the activity of dealing in or advising on OTC derivatives contracts may not be regulated in other jurisdictions.

MAS' Response

7.3 After careful consideration of the options suggested by respondents, MAS will grandfather existing Para 9 and Para 11 arrangements for the activities of dealing in or advising on OTC derivatives, subject to the conditions which are customarily imposed on such arrangements. These customary conditions include the clientele restriction to AIs and IIs, performance of know-your-customer checks in accordance with MAS' Notice on Prevention of Money Laundering and Countering the Financing of Terrorism, proper recordkeeping of the arrangement (including transactions effected under the arrangement), proper recordkeeping and oversight of foreign representatives under the arrangement, certain notification requirements to MAS (e.g. if there is a material change

[9] Para 9 allows a foreign company to carry on any regulated activity that is effected under an arrangement between the foreign company and its related corporation licensed under the SFA or exempted under section 99(1)(a), (b), (c) or (d) of the SFA, where such arrangement is approved by the Authority. Similarly, Para 11 allows a foreign company whose provision of any financial advisory service is effected under an arrangement between the foreign company and its related corporation which is licensed under the Act or exempt under section 23 (other than subsections (1)(ea) and (1)(f)), where such arrangement is approved by the Authority.

[10] For details on the criteria, please refer to MAS' Guidelines on Applications for Approval of Arrangements under Paragraph 9 of the Third Schedule to the Securities and Futures Act and Guidelines on Applications for Approval of Arrangements under Paragraph 11 of the First Schedule to the Financial Advisers Act.

in the arrangement) and providing MAS access to the documentation or records of the arrangement.

7.4 As for the criterion on supervision by a home authority, MAS would like to clarify that the home authority does not necessarily refer to the home financial services authority (e.g. dealing in OTC commodity derivatives may require licensing from the ministry or other government body regulating commodities trading in certain jurisdictions). Where an activity is indeed not subject to regulation in a foreign jurisdiction, MAS will take a sensible approach and will not reject the Para 9/11 application solely on this basis.

8 Marketing of Collective Investment Schemes

8.1 MAS proposed to remove the regulated activity of marketing of CIS under the FAA, and expand the scope of the SFA dealing exemption[11] to allow a licensed financial adviser or an exempt financial adviser under section 23(1)(a), (b), (c), (d) or (e) of the FAA ("Financial Advisers") to deal in both listed and unlisted CIS if such dealing is incidental to their advisory activities. To ensure a level playing field for all entities marketing CIS, MAS also proposed to subject Financial Advisers and their representatives relying on the SFA dealing exemption to the relevant business conduct requirements for dealing in CIS under the SFA. MAS further proposed to exempt licensed and registered fund management companies from the requirement to hold a CMS licence for dealing in CIS if they are only marketing CIS which are managed by the FMCs themselves or their related corporations.

8.2 On the proposed expansion of the SFA dealing exemption, some respondents commented that linking the exemption to the provision of financial advisory services may preclude Financial Advisers relying on the exemption from assisting customers to transact in a CIS that is not in accordance with the recommendation provided. This may reduce the number of Financial Advisers who can help their clients transact in CIS.

8.3 One respondent asked if Financial Advisers relying on the SFA dealing exemption will be required to keep a written record of customer orders and provide customers with contract notes under regulations 39 and 42 the SF(LCB)R respectively, and if it was

[11] Under paragraph 2 of the Second Schedule to the SF(LCB)R, a Financial Adviser which markets CIS is exempt from the requirement to hold a CMS licence for dealing in securities when it markets or redeems units in a CIS.

necessary to port regulation 19[12] of the Financial Advisers Regulations ("FAR") on treatment of customers' moneys to the SF(LCB)R, as there are already rules on the safeguarding of customers' moneys and assets under Part III of the SF(LCB)R.

8.4 Some respondents also requested MAS to port over the existing licensing exemption under the FAA for persons who market CIS to only IIs to the SFA. This exemption is typically used by offshore fund management companies to market CIS to IIs.

8.5 Some respondents highlighted that licensed fund managers had filed notifications to act as an exempt financial adviser ("EFA") for "advising others, either directly or through publications or writings", and "advising others by issuing or promulgating research analyses or research reports". They argued that fund managers are "advising others" solely to facilitate the marketing of CIS, illustrate the investment processes and strategies, and/or to review the past performance of the portfolios/accounts/funds managed by them or their related corporations. In such cases, these fund managers should not be caught under the FAA.

MAS' Response

8.6 MAS will proceed to remove the regulated activity of "marketing of CIS" from the FAA. On the SFA dealing exemption, it is intended to enable Financial Advisers to provide financial advisory services to customers on a holistic basis. This allows Financial Advisers to implement the advice provided to customers, as Financial Advisers are allowed to help customers to, for instance, buy the CIS recommended (as opposed to customers having to approach a broker to buy the recommended CIS). The SFA dealing exemption is thus linked to the provision of finance advice. After considering the feedback, MAS will broaden the exemption to allow Financial Advisers to help customers transact in a CIS provided advice covering that CIS has been provided. For instance, if the Financial Adviser advises that a CIS is not suitable but the customer still wishes to buy that CIS, the Financial Adviser may rely on the SFA dealing exemption to help the customer. However, the

[12] Under Regulation 19 of the FAR, where a licensed financial adviser or any of its representatives, in its marketing of any CIS, receive client's money or property, such money shall be handed over to (a) the provider of the CIS; (b) a holder of a CMS licence under the SFA to provide custodial services for securities which is authorised by the client to receive the client's money or property; or (c) a person exempt under the SFA from holding a CMS licence to provide custodial services for securities which is authorised by the client to receive the client's money or property, not later than the business day immediately following the day on which the licensed financial adviser or representative receives the money or property.

Financial Adviser may help the customer only after meeting the safeguards[13] required under the FAA. Financial Advisers who do not provide any advice, and merely wish to facilitate buying or selling of CIS by customers should not rely on the SFA dealing exemption and should, instead, hold a CMS licence to deal in CIS.

8.7 Financial Advisers relying the SFA dealing exemption should keep proper records of the order received from customers and how the order is executed (e.g. time and order information transmitted to the broker). In view of this, MAS will require Financial Advisers relying on the SFA dealing exemption to comply with regulation 39(3) of the SF(LCB)R, which requires particulars of the customer's order, and the date and time of the receipt, amendment, cancellation and execution of the order to be kept. MAS will however not require Financial Advisers relying on the SFA dealing exemption to comply with regulation 42 of the SF(LCB)R, as their role is to facilitate the passing of customer orders to brokers, who will execute the orders and are required to issue contract notes to the end customers.

8.8 Financial Advisers are prohibited under regulation 19 of the FAR from holding customers' moneys or assets. MAS is of the view that this prohibition should also remain for Financial Advisers who help customers transact in CIS under the SFA dealing exemption. As this prohibition is not present in the SF(LCB)R, MAS will replicate regulation 19 of the FAR in the SF(LCB)R.

8.9 MAS agrees with the suggestion that the existing licensing exemption under the FAA for entities that market CIS to only IIs should be replicated in the SFA, given that IIs are sophisticated and are themselves providing capital markets or financial advisory services to customers. MAS will thus introduce this licensing exemption under the SFA. MAS will also exempt persons dealing in CIS with only IIs from the business conduct requirements under the SFA. MAS will similarly exempt entities that deal in CIS with only related corporations or connected parties from licensing and business conduct requirements under the SFA.

8.10 MAS would like to clarify that fund managers which merely provide factual information on investment products managed by them or their related corporations are not deemed to be providing financial advice. The FAA would not apply to these managers to the extent that they provide information on the investment strategies, processes and past performance of such investment products, without taking into account the specific

[13] Such as documenting the decision of the customer and highlighting to the customer in writing that it is the customer's responsibility to ensure the suitability of the CIS selected. See FAA Notice on Recommendations on Investment Products (FAA-N16) for the safeguards required.

investment objectives, financial situation and the particular needs of any person receiving the information. Accordingly, these managers would not be required to file notifications to be an EFA and to comply with FAA business conduct requirements.

MONETARY AUTHORITY OF SINGAPORE

26 May 2017

Annex A

LIST OF RESPONDENTS TO THE POLICY CONSULTATION ON REGULATORY FRAMEWORK FOR INTERMEDIARIES DEALING IN OTC DERIVATIVES CONTRACTS AND MARKETING OF COLLECTIVE INVESTMENT SCHEMEs

1. The Alternative Investment Management Association Ltd (AIMA)
2. Bloomberg LP
3. Cargill Asia Pacific Holdings Pte Ltd
4. Citigroup entities
5. Clifford Chance
6. Deutsche Bank AG
7. Derivatives Law Academy
8. DNB entities
9. Eastspring Investments (Singapore) Ltd
10. Eureka Capital Partners Pte Ltd
11. FIL Investment Management (Singapore) Limited
12. Gain Capital Singapore Pte Ltd
13. Ginga Global Markets Pte Ltd
14. Global Financial Markets Association (GFMA)
15. ICAP
16. iFAST Financial Pte Ltd
17. Insurance and Financial Practitioners Association (IFPAS)
18. Investment Management Association of Singapore (IMAS)
19. Lion Global Investors Ltd

20. Lymon Pte Ltd
21. Mitsubishi UFJ Trust and Banking Corporation, Singapore Branch
22. RHTLaw Taylor Wessing LLP
23. Royal Bank of Canada, Singapore Branch
24. Sidley Austin LLP
25. Straits Financial Services Pte Ltd
26. Sumitomo Mitsui Banking Corporation, Singapore Branch
27. Sundaram Asset Management Singapore Pte Ltd
28. The Bank of Tokyo-Mitsubishi UFJ, Ltd.
29. The Securities Association of Singapore (SAS)
30. Unicorn Financial Solutions
31. Wong Partnership LLP

Nine other respondents requested confidentiality.

Monetary Authority of Singapore