

**By E-mail**

Capital Markets Policy Division  
Markets Policy & Infrastructure Department  
Monetary Authority of Singapore  
10 Shenton Way  
MAS Building  
Singapore 079117

31 March 2015

Dear Sirs and Madams

**MAS Consultation Paper on Proposed Amendments to the Securities and Futures Act ("SFA")**

FIA Asia ("**FIA**") and ASIFMA ("**ASIFMA**") welcome the opportunity to provide feedback to the Monetary Authority of Singapore ("**MAS**") on its February 2015 consultation paper on proposed amendments to the Securities and Futures Act (the "**Consultation Paper**").

FIA represents a diverse group of exchange-traded and centrally cleared derivatives industry market participants from across the Asia Pacific region. Our members include banking organisations, clearing houses, exchanges, brokers, vendors and trading participants. Under FIA Global, with our affiliate associations FIA Americas and FIA Europe, we are the primary global industry association for centrally cleared futures, options and swaps.

ASIFMA is an independent, regional trade association with over 80 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Through the GFMA alliance with SIFMA in the US and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

**Executive Summary**

We are fully supportive of regulatory reform that will assist in the development and strengthening of global capital markets. We also strongly support the MAS' efforts to date to minimise duplicative, inconsistent and conflicting regulatory requirements and urge that international regulatory coordination continue to achieve cross-border harmonisation.

We also understand that many of the changes proposed in the Consultation Paper will be introduced at a future date through subsidiary legislation and MAS guidelines and notices. Due to the extensive changes proposed, we strongly urge that sufficient time and consultation be given to allow for adequate consideration and review of the implementing rules to ensure there are no unintended consequences and to minimise market disruption and fragmentation.

For example, we understand that the MAS intends to introduce simpler, principles-based definitions. We are concerned this broad brush approach for example to replace all references to "futures contracts" with "derivative contracts" and for "derivative contracts" to cover all futures contracts, exchange-traded derivatives and OTC derivative contracts may lead to unintended consequences. Such consequences may include additional regulation for certain product types for which such regulation is unintended or not appropriate or an impact on accounting, capital and margining treatments.

The exchange-traded derivatives market is an established, well-functioning and generally highly liquid market involving standardised products and most exchange-traded products are already centrally cleared. Exchange-traded derivatives already are characterised by high pre-trade and post-trade transparency, by providing price, size and depth towards the market, and trade reporting close to real time.

We urge the MAS to ensure that there is a clear distinction between exchange-traded derivatives and what market convention refers to as OTC derivatives to ensure that the existing markets are not disrupted and fragmented. We welcome further industry discussions and consultation with the MAS as we move forward in this process.

#### **FIA and ASIFMA's comments**

We set out our detailed comments to the proposed amendments contained within the Consultation Paper in Appendix 1 of this response letter.

We thank you for this opportunity to respond to the Consultation Paper and we are, of course, very happy to discuss with you in greater detail any of our comments. Please do not hesitate to contact Lena Ng at [lena.ng@cliffordchance.com](mailto:lena.ng@cliffordchance.com), Phuong Trinh, General Counsel of FIA Asia at [ptrinh@fiaasia.org](mailto:ptrinh@fiaasia.org) or Trevor Clark, Manager of ASIFMA at [tclark@asifma.org](mailto:tclark@asifma.org) if you have any questions.

Yours sincerely



William Herder  
President  
FIA Asia



Mark Austen  
Chief Executive Officer  
ASIFMA

## APPENDIX 1

### FIA's and ASIFMA's Comments on the Consultation Paper

No.	Proposal	Amendment	Comments/ Recommendations
<b>1. Amendments to Part I (Preliminary) of the SFA</b>			
<b>(a) Revised definition of "derivative contract"</b>			
1.	The MAS has proposed to introduce a principle-based definition of "derivative contract" which aims to describe the key elements of derivatives.	<p>Under the proposed definition of "derivative contract", the two main elements which will constitute a derivative contract are (a) a party to the contract or arrangement is, or may be required to, discharge its obligations under the contract or arrangement at some future time; and (b) the discharge of its obligations, or the value of the contract or arrangement, is ultimately determined, derived from or varies by reference to (wholly or in part), the value or amount of one or more underlying things.</p> <p>The proposed definition of "underlying thing" includes "any unit in a collective investment scheme" and a "financial instrument".</p> <p>The proposed definition of "derivatives contract" excludes, <i>inter alia</i>, securities and spot contracts.</p>	<p>We note that the MAS' intention is that the provisions in the SFA will generally apply to all "derivative contracts", which includes exchange-traded derivative contracts, futures contracts and over-the-counter ("OTC") derivative contracts and requirements that necessitate a distinction for exchange-traded derivatives, futures contracts and/or OTC derivatives contracts will be specified in subsidiary legislation.</p> <p>We are concerned that this broad brush approach in replacing all references to "futures contracts" with "derivative contracts" (which we note from Annex 1 of the Consultation Paper is in actual fact largely a replacement with "capital market products") and for "derivative contracts" to cover all futures contracts, exchange-traded derivatives and OTC derivative contracts may lead to unintended consequences (e.g. additional regulation for certain product types for which</p>

			<p>such regulation is unintended or not appropriate or an impact on accounting, capital and margining treatments). We urge the MAS to ensure that there is a clear distinction between exchange-traded derivatives and what market convention refers to as OTC derivatives. We note that the exchange-traded derivatives market is an established, well-functioning and generally highly liquid market involving standardised products and most exchange traded products are already centrally cleared. Exchange-traded derivatives are already characterised by high pre-trade and post-trade transparency, by providing price, size and depth towards the market, and trade reporting close to real time.</p> <p>Further, we would be grateful for clarification on the application of the definition of "derivatives contracts". The proposed definition could be very widely interpreted and applied to include contracts and transactions that we believe would not be within the MAS' policy intent (e.g. business transfers or asset sales). However other contracts, such as non-deliverable forwards and other cash-settled forward contracts may be treated as "derivative contracts" and within the MAS' policy intent. We would be happy to provide and discuss specific examples at the MAS' request.</p> <p><b>Recommendation: We request that the</b></p>
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			<p>proposed distinctions to be implemented via subsidiary legislation be open to consultation and that adequate time is provided for us (and other industry participants) to provide feedback on the same in order that we have sufficient time to consider the consequences of the subsidiary legislation or changes thereto.</p> <p>We request that the MAS consider approaches adopted in other jurisdictions (for example Australia, which has a similar principles-based approach) and consider industry product taxonomies for making distinctions to ensure consistent granularity and completeness.</p> <p>We also note that an OTC derivative contract that is subject to mandatory trading may fall within the definition of a "futures contract" (as defined in the draft amendments to the SFA).</p> <p><b>Recommendation:</b> We are of the view that this would not be an appropriate categorisation. As mentioned above, the existing futures and exchange-traded derivatives market is already an established, well-functioning market. We would, therefore, request clarity as to how an OTC derivative contract that is subject to mandatory trading would be categorised in</p>
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			the future.
2.	<p>The MAS has proposed to replace references to "futures contracts" with "derivative contract" throughout the SFA, in order to ensure that provisions in the SFA are generally applicable to all "derivative contracts". Requirements that necessitate a distinction for futures contracts or exchange-traded derivatives will be specified in subsidiary legislation.</p>	<p>The MAS has replaced references to "futures contracts" throughout the SFA – but in most cases not with "derivative contract" as set out in the Consultation Paper, but with "capital market products" in order to include securities as well (and sometimes with "any unit in a collective investment scheme"<sup>1</sup>).</p> <p>The MAS has retained a revised definition of "futures contract" under Section 2 of the SFA. "futures contract" is now defined to include forwards and options.</p> <p>The term "futures contract" now only appears in Part II (<i>Interpretation</i>) of the Second Schedule to the SFA, within the definition of "providing custodial services in relation to securities, securities-based derivative contracts and units in a collective investment scheme" as well as "securities, securities-based derivative contracts and collective investment scheme financing".</p>	<p>We would be grateful if the MAS could confirm that the definition of "futures contract" is being retained to be used in the Second Schedule to the SFA and in the subsidiary legislation to be implemented.</p> <p><b>Recommendation: We are of the view that in relation to "option on such exchange-traded derivative contracts" the MAS should consider making clear in the drafting that the expression "which is traded in accordance with the business rules or practices of the organised market" also qualifies the option, so that there is no doubt that OTC options on exchange-traded derivative contracts are not included within "futures contracts".</b></p> <p>We are concerned that the proposed definitions of "futures contract" and "exchange-traded derivative contract" could potentially lead to unintended and incorrect categorisations of transactions. We urge the MAS to ensure that there is a clear distinction between exchange-traded derivative contracts and futures contracts</p>

<sup>1</sup> For example purposes, we refer the MAS to the definition of "securities" in Section 196A in Part XII and in paragraph 4(1)(a)(ii) of the First Schedule to the draft SFA.

			<p>and consider product or industry taxonomies.</p> <p>For example the treatment of "block trades" at exchanges should be considered and be appropriately defined. A block trade is a privately negotiated futures, options or combination transaction that is permitted to be executed away from the public auction market. However, generally speaking, it is still considered a "futures contract". Block trades are generally permitted in specified products and are subject to minimum transaction size requirements and are governed by exchange rules. Although negotiated privately, these transactions should not be treated in the same manner as an OTC derivative contract.</p> <p><b>Recommendation:</b> We request that the proposed distinctions to be implemented via subsidiary legislation be open to consultation and that adequate time is provided for us (and other industry participants) to provide feedback on the same in order that we have sufficient time to consider the consequences of the subsidiary legislation or changes thereto.</p>
<b>(b) Revised definition of "securities"</b>			
3.	The MAS has proposed to simplify the definition of "securities" to conform to a simple understanding of "securities", comprising solely	The MAS has introduced a revised definition of "securities" comprising solely of either equity instruments representing legal or beneficial	We would be grateful if the MAS could clarify (i) what "other similar instruments" refers to or provide examples of the same; (ii) how both

	<p>of either equity instruments representing legal or beneficial ownership interests, or debt instruments.</p>	<p>ownership interests, or debt instruments. It is shorter and simpler than the previous definition.</p> <p>The proposed definition of "securities" excludes any unit in a collective investment scheme.</p>	<p>limbs of the definition of "securities" apply in respect of other entities such as partnerships and limited liability partnerships.</p> <p>We note that the revised definition of "securities" does not exclude securities-based derivatives contracts or derivative contracts. We would be grateful if MAS could confirm that this is intentional.</p> <p>We also note that the revised definition of "securities" includes interests in partnerships and limited liability partnerships. As this is a new addition to "securities" which was not mentioned in the Consultation Paper, we would be grateful if the MAS could clarify that this addition was intentional. Furthermore, as this addition indicates a policy shift to start regulating interests in partnerships and limited liability partnerships as "securities", we would be grateful if the MAS could explain the rationale for this change.</p>
4.	<p>The MAS proposes to introduce a new "securities-based derivative contract" as a subset of the proposed "derivatives contract" definition.</p>	<p>The MAS has introduced a new "securities-based derivative contract" which means any contract or arrangement where (a) a party to the contract or arrangement must, or may be required to, discharge its obligations under the contract or arrangement at some future time; and (b) the amount of the consideration, or the value of the contract or arrangement, is ultimately determined, derived from or varies</p>	<p>We note that the MAS' intention is for "securities-based derivative contracts" to be a subset of "derivative contracts".</p> <p>While the proposed new definition of "securities-based derivative contracts" overlaps with the definition of "derivative contracts", it does not appear to be a complete subset of "derivatives contract" because the terms used in</p>



		<p>by reference to (wholly or in part) the value or amount of any securities or securities index.</p>	<p>both definitions and carve-outs are inconsistent. For example, the definition of "derivative contract" uses "discharge of obligations" while the "securities-based derivative contracts" uses "amount of consideration". The definition of "derivative contracts" contains a list of carve-outs such as the carve-out for securities and spot contracts while these carve outs are not included in the definition of "securities-based derivative contracts".</p> <p>We note that the definition of "spot foreign exchange contract" has not been set out in the Second Schedule to the SFA. Will the definition of a "spot foreign exchange contract" to be included in the Second Schedule to the SFA match the definition of a "spot foreign exchange contract" as defined in the Securities and Futures (Reporting of Derivative Contracts) Regulations?</p> <p><b>Recommendation:</b> We request that MAS clarify if the inconsistencies are deliberate and if so we are concerned that such drafting will result in unintended consequences. We suggest that the MAS refine the proposed definition of "securities-based derivative contracts" such that it will be a "derivative contract" where the underlying thing consists of securities or securities indices and for the MAS to provide a definition of</p>
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			<p><b>"securities index".</b></p> <p>We would also be grateful if the MAS could clarify how structured products (such as structured notes and structured loans) will be classified given that they may potentially fall under the definitions of "securities", "derivative contracts" and "securities-based derivative contracts".</p>
<b>(c) Revised definition of "capital markets products"</b>			
5.	<p>The MAS has proposed to introduce a new definition of "capital markets products" which is a catch-all term when making references to all regulated products in the SFA. The definition of "capital markets products" will also include derivative contracts and collective investment schemes.</p>	<p>The MAS has introduced a revised definition of "capital markets products", making references to all regulated products in the SFA. All regulated products referenced to are defined separately within the SFA.</p> <p>The list of capital markets products proposed by the MAS in the Consultation Paper (namely, securities, collective investment schemes, exchange-traded derivatives, OTC derivatives and spot foreign exchange contracts traded on a margin basis) differs from the proposed definition of "capital markets products" in</p>	<p>We note that "securities-based derivative contract" has been excluded from the new proposed definition of "capital markets products" and assume this is because the intention was for "securities-based derivative contracts" to be a subset of "derivative contracts".</p> <p>We note, however, that the proposed new definition of "securities-based derivative contract" does not appear to have the effect of making it a subset of "derivative contract". We refer to our comment (5) above.</p> <p>We would be grateful if the MAS could clarify which products are included in the definition of "capital markets products".</p> <p>We note that the definition of "spot foreign exchange contract" has not been set out in the</p>

		<p>Annex 1 of the Consultation Paper, which includes "any securities, unit in a collective investment scheme, "derivative contract" and "spot foreign exchange contract" for the purposes of leveraged foreign exchange trading.</p> <p>The term "dealing in securities" is deleted entirely and replaced with "dealing in capital markets products".</p>	<p>Second Schedule to the SFA. Will the definition of a "spot foreign exchange contract" to be included in the Second Schedule to the SFA match the definition of a "spot foreign exchange contract" as defined in the Securities and Futures (Reporting of Derivative Contracts) Regulations?</p>
<b>(d) Revised definition of "organised market"</b>			
6.	<p>The MAS has proposed to introduce a new definition of "organised market", which will replace existing definitions of "market", "securities market" and "futures market".</p> <p>The proposed definition of "organised market" will define a market by its underlying function of facilitating the exchange, sale or purchase of specified products regulated under the SFA (including derivative contracts).</p>	<p>The MAS has introduced a revised definition of "organised market", replacing the definitions of "market", "securities market" and "futures market".</p> <p>An "organised market" is defined as place or a facility (whether electronic <i>or otherwise</i>) by means of which offers and acceptances to exchange, sell or purchase securities... derivative contracts are regularly made on a <u>centralised</u> basis.</p>	<p>We note from the Consultation Paper that the intention is for the "organised market" definition to capture only electronic trading facilities and not 'voice assisted' facilities. We would be grateful if the MAS could clarify the intention behind the use of "<i>or otherwise</i>" and what it covers (for example, white boards, bulletin boards for price discovery, bank trading platforms and hybrid trading platforms, which can involve either voice or electronic platforms). We would also be grateful if the MAS could clarify that independent software vendors are not intended to fall within the definition of "organised market".</p> <p><b>Recommendation: We suggest that the MAS specify in the definition of "organised market" that only electronic trading platforms (in relation to OTC derivative</b></p>

			<p><b>contracts) with operating rules will be caught by the definition.</b></p> <p>The definition currently states that it does not include "a place or facility used by <u>only one person</u>". We would be grateful if the MAS could clarify if the reference to "one person" can include one group of companies. Banks and other financial institutions have trading platforms that may be used by different legal entities within its corporate group and we believe it is not the MAS' policy intent to regulate such trading platforms.</p> <p>We note that the term "organised market" is used throughout the SFA.</p> <p><b>Recommendation: Rather than set out the "organised market" definition in the First Schedule, we would suggest that the MAS include the definition in the definitions section of the SFA (Part I - Preliminary, section 2 - Interpretation), instead of referencing the definition in Schedule 1.</b></p>
<b>(e) Other definitions</b>			
7.	Deletion of definition of "exempt market operator"	The MAS has deleted the definition of "exempt market operator" from Part I of the SFA, although "exempt market operator" is used in Section 322(1)(a) and in the definition of "relevant person" in Section 334 of Part XV of	We would be grateful if the MAS could clarify if the deletion of "exempt market operator" was intended.

		the SFA.	
<b>2. Amendments to Parts II (Organised Markets) to IIIA (Approved Holding Companies) of the SFA</b>			
8.	<p>The MAS has proposed a new Part II of the SFA which will extend the existing regulatory regime for market operators to entities which intend to establish or operate facilities for the trading of OTC derivatives.</p>	<p>The MAS has proposed that "no person shall establish or operate an <i>organised market</i> or hold himself as operating an <i>organised market</i>, unless the person is an Approved Exchange ("AE") or a Recognised Market Operator ("RMO")."</p> <p>The MAS has made a distinction between a Singapore corporation and a foreign corporation. A Singapore corporation may apply to be an AE or a RMO, whereas a foreign corporation may only apply to be a RMO.</p> <p>The MAS has not released detailed requirements for RMOs and the transitional arrangements for market operators.</p>	<p>We note from the Consultation Paper that only Singapore corporations which are systemically important will be regulated as AEs.</p> <p><b>Recommendation: We request the MAS to provide guidelines as to what kind of entities are systematically important and therefore will be approved and regulated as an AE or an RMO.</b></p> <p>We note that the MAS may refuse to approve an application if the corporation does not satisfy the general criteria prescribed under Section 10 of Part II of the SFA.</p> <p>Further, we note that the MAS may by notice in writing, exempt any corporation from the requirement for approval or recognition under Section 7(1) of Part II of the SFA.</p> <p><b>Recommendation: In the interests of transparency, we request that the MAS clarify whether such general criteria will be made available and how such general criteria will be made available. For example, is there a requirement for foreign corporations to establish a local presence in</b></p>

			<p><b>order to be a RMO?</b></p> <p><b>Recommendation: We would also suggest that the following amendment be made to Section 9(6) of Part II of the SFA:</b></p> <p><b>"... subsections (4) and (5)."</b></p> <p><b>as there is a typographical error.</b></p>
9.	The MAS has proposed to introduce certain enhancements to the RMO regime, in particular, imposing requirements for an RMO to ensure appropriate governance arrangements and providing assurance that failure to comply with business rules would not affect the rights of RMO participants.	<p>The requirements for an RMO to ensure appropriate governance arrangements have been imposed by the MAS under Sections 33 to 39 of Part II of the SFA.</p> <p>Assurance that non-compliance with business rules or listing rules of a RMO not to substantially affect its rights has been added by the MAS under Section 40 of Part II of the SFA.</p>	<p>We note that no changes to these sections have been proposed in Annex 1 of the Consultation Paper. We would be grateful if the MAS could confirm whether such enhancements will be introduced by further amendments to the SFA or through subsidiary legislation.</p> <p><b>Recommendation: We request for adequate time to consider and comment on any such amendments and that sufficient transition time be given to adapt to any changes required.</b></p>
10.	The MAS has proposed to amend section 16, 46K, 58 and 81ZA of the SFA to require that the MAS should be notified whenever a regulated entity operates or acquires any new business, regardless of the type of business.	Each of Section 16 of Part II, Section 46K of Part IIA, Section 58 of Part III and Section 81ZA of Part IIIA of the SFA has been amended to provide that an entity (i.e. an AE, licensed trade repository, approved clearing house or approved holding company, as the case may be) shall give the MAS notice upon the occurrence of, amongst others, the carrying on of any business by such entity, that is not a	<p>We note that the mark-up of Annex 1 of the Consultation Paper was not a complete indication of all changes. For example, Section 16 of Part II of the SFA was amended to include notice requirements but the changes do not show up in the mark-up provided. Will the MAS be reissuing Annex 1 of the Consultation Paper showing all the relevant changes?</p>

		business within such class of business as the MAS may prescribe or the acquisition by such entity of a substantial shareholding in a corporation which carries on any business that is not such business or within such class of business as the MAS may prescribe.	
<b>3. Amendments to Part IV and the Second Schedule (Regulated Activities) to the SFA, and the Second Schedule to the SF(LCB)R</b>			
<b>(a) Dealing in Capital Markets Products</b>			
11.	The MAS has proposed to introduce the regulated activity of "dealing in capital markets products", which will replace the current definitions of "dealing in securities", "trading in futures contracts" and "leveraged foreign exchange", as well as the new dealing in OTC derivatives activity.	<p>There is a new definition of "dealing in capital markets products", replacing the previous definitions of "dealing in securities" and "trading in futures contracts" in Part I of the SFA.</p> <p>"dealing in capital markets products" means (whether as principal or agent), (a) making or offering to make with any person; or (b) including or attempting to induce any person to enter into or to offer to enter, any agreement for on with a view to acquiring, disposing of, entering into, effecting, arranging, subscribing for, or underwriting any <u>capital markets products</u>.</p> <p>The new definition of "spot foreign exchange contract" states that it shall have the meaning in the Second Schedule to the SFA.</p>	<p>There is still a reference to "the holder of a capital markets services licence for leveraged foreign exchange trading" under the proposed new Section 309A(1) of the SFA. As the MAS' intention is to collapse the current regulated activities of "dealing in securities", "trading in futures contracts" "leveraged foreign exchange" and dealing in OTC derivatives activity under a new "dealing in capital markets products", reference to "holder of a capital markets services licence for leveraged foreign exchange trading" in Section 309A(1) should be amended to "holder of a capital markets services licence for dealing in capital markets products".</p> <p>We note that there is no definition of "spot foreign exchange contract" set out in the Second Schedule to the SFA. We would be grateful if the MAS could clarify whether the definition of "spot foreign exchange contract"</p>

			will be included in the SFA in due course.
12.	<p>The MAS has proposed that a capital markets services ("CMS") licensee will be required to indicate the specific class of capital markets products that it or its representative will be dealing in.</p> <p>A CMS licensee which intends to expand his dealing activity into another product class will be required to seek MAS' approval by way of an application for the variation of licence.</p> <p>The afore-mentioned requirements also apply to exempt financial institutions, such as banks licensed under the Banking Act or merchant banks approved under the MAS Act.</p>	<p>The list of regulated activities in Part I of the Second Schedule to the SFA is amended to include "dealing in capital markets products".</p> <p>The amendment has been made to Section 90 of Part IV of the SFA (the new subsection 1(b)).</p>	<p>We note the MAS' intention to impose a requirement on a CMS licensee and an exempt financial institution to indicate the specific class of capital markets products.</p> <p>We would be grateful if the MAS could clarify where such a requirement will be specified in Part IV of the SFA. In particular, we note the reference to specific classes of capital markets products is missing in Sections 86 and 99 of Part IV of the SFA. In Division 2 of Part IV of the SFA, the addition of references to "concerning [that] type of capital markets product" throughout to qualify "regulated activity" is not strictly correct as not all regulated activities relate to specific classes of capital markets products.</p>
<b>(b) Dealing in Capital Markets Products in respect of over-the-counter derivative contracts</b>			
13.	<p>The MAS has proposed to introduce the new regulated activity of "dealing in capital markets products", which will encompass the new regulated activity of dealing in OTC derivatives.</p>	<p>The MAS has proposed to revoke the exemption status of a corporation if, inter alia, the corporation or its substantial shareholder has been convicted of a relevant offence.</p>	<p><b>Recommendation: We query whether it is appropriate to revoke the exemption status of a corporation based on its substantial shareholder's conviction record. We submit that the disqualification should only occur if the corporation has been convicted of an offence.</b></p>
<b>(c) Licensing Exemptions</b>			



14.	<p>The MAS has proposed to exempt certain persons from the requirement to hold a CMS licence for "dealing in capital markets products" in respect of <u>OTC derivatives</u>.</p>	<p>The licensing exemptions are set out in the Securities and Futures (Licensing and Conduct of Business) Regulations (the "<b>SF(LCB)R</b>").</p> <p>The MAS has introduced a new paragraph X in the Second Schedule to the SF(LCB)R for licensing exemptions in respect of OTC derivative contracts. Paragraph X(1) lists the types of persons that are exempted.</p> <p>The MAS has also proposed that a corporation which seeks exemption under paragraph X(1)(e) in the Second Schedule to the SF(LCB)R will have to register as a Registered OTC Derivatives Broker by lodging a notice of commencement of business with the MAS not later than 14 days after the commencement of its business in dealing with capital markets products. Paragraph X(7) specifies the procedure for registration.</p>	<p>We would be grateful if the MAS could confirm its intention for paragraph X(1)(a) to include intra-group trading.</p> <p><b>Recommendation: We would suggest that the MAS make the following changes for clarity:</b></p> <p><b>"...a person who carries on business in dealing in capital markets products in respect of over-the-counter derivatives contracts for his own account (or an account belonging to and maintained wholly for the benefit of a related corporation), <del>and with another related corporation;</del>..."</b></p> <p>We note that in order to qualify under the exemption pursuant to paragraph X(1)(e), a firm has to be registered with the MAS in accordance with paragraph X(7) <u>and</u> the registration published on the MAS website. However, under paragraph X(7), the firm is to register with the MAS not later than 14 days <u>after</u> the commencement of its business in dealing in OTC derivatives. We would be grateful if the MAS could confirm that the firm can register with the MAS <u>before</u> the commencement of such activities and that the exemption can take effect once the firm has made the lodgment of notice of commencement of its business.</p>
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15.	<p>The MAS has proposed to exempt certain persons from the requirement to hold a CMS licence for "dealing in capital markets products" in respect of <u>exchange-traded derivative</u> contracts which are futures contracts.</p>	<p>The MAS has introduced a new paragraph 3 in the Second Schedule to the SF(LCB)R for licensing exemptions in respect of exchange-traded derivative contracts which are futures contracts.</p>	<p>We are seeing a trend of "futurisation" of swaps, as such a product that may at one point in time be traded OTC, may be "futurised" and traded as a futures contract. For firms, this may mean that they may need to be regulated in relation to two types of capital markets products at that stage. However, firms may only start out on being regulated or exempted in relation to OTC derivatives.</p> <p><b>Recommendation: In order to ensure there are no disruptions to the market, we request that the MAS allow such firms sufficient time to apply for relevant extensions and/or exemptions.</b></p> <p>We note that the MAS proposes to amend the</p>

		<p>Similar to OTC derivatives above, the MAS has also proposed that a corporation which seeks exemption under paragraph 3(1)(d) will have to register as a Registered Futures Broker by lodging a notice of commencement of business with the MAS not later than 14 days after the commencement of its business in dealing with capital markets products. Paragraph 3(6) specifies the procedure for registration.</p>	<p>licensing exemptions which currently exist for "dealing in securities", "trading in futures contracts", "leveraged foreign exchange" and the other regulated activities.</p> <p>We note that in order to qualify under the exemption pursuant to paragraph 3(1)(d), a firm has to be registered with the MAS in accordance with paragraph 3(6) <u>and</u> the registration published on the MAS website. However, under paragraph 3(6), the firm is to register with the MAS not later than 14 days <u>after</u> the commencement of its business in dealing in exchange-traded derivatives. We would be grateful if the MAS could confirm that the firm can register with the MAS <u>before</u> the commencement of such activities and that the exemption can take effect once the firm has made the lodgment of notice of commencement of its business.</p> <p>In respect of firms that are already carrying on such activities, there is a concern that the licensing regime for new regulated activities would be introduced in circumstances where such firms are not yet able to rely on the exemption (e.g. not sufficient time to lodge the notice and/or the registration is not published on the MAS website).</p> <p><b>Recommendation: We request for adequate transition time to adapt to any changes</b></p>
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			<b>required, so as not to disrupt existing activity in this space. Otherwise, there may be adverse effect on the market.</b>
16.	Certain of FIA's and ASIFMA's members currently benefit from the exemption under paragraph 9 of the Third Schedule of the SFA / paragraph 11 of the First Schedule of the Financial Advisers Act.		We would be grateful if the MAS could confirm whether the existing exemption regime under paragraph 9 of the Third Schedule of the SFA and paragraph 11 of the First Schedule of the Financial Advisers Act would be grandfathered and also consider extending existing paragraph 9 and paragraph 11 exemptions that have been granted in relation to "dealing in securities", "trading in futures contracts" and/or "leveraged foreign exchange trading" to the new regulated activity of "dealing in capital markets products". This would help to facilitate a smooth transition for market participants with existing cross-border activities, particularly in relation to OTC derivatives contracts.
<b>4. Amendments to Part VIA (Reporting of Derivative Contracts) of the SFA</b>			
17.	The MAS has proposed to make amendments to clarify that specified derivative contracts by a specified person who acts as an agent of a party to that contract which are booked in Singapore would have to be reported, even if these contracts will not traded in Singapore.	<p>The MAS has made amendments to Part VIA.</p> <p>In respect of the proposed amendments to Section 124 of the SFA, the MAS has replaced the definition of "bank in Singapore" with "bank" in Part VIA. The requirement for a bank to be a "bank in Singapore licensed under the Banking Act" in the definition of "specified</p>	<p>We note that the proposed amendment to the definition of "bank in Singapore" could result in the extra-territorial scope of the reporting obligations being expanded such that transactions executed by offshore branches of foreign banks licensed by the MAS would be captured.</p> <p><b>Recommendation: We would be grateful if</b></p>

		<p>person" has also been removed.</p>	<p><b>the MAS could clarify the rationale behind this proposed amendment and request that the original references to "bank in Singapore" be reinstated in Part VIA of the SFA.</b></p> <p>In relation to the proposed amendments to Section 125(3)(c) of the SFA, we would be grateful if the MAS could clarify what the expression "<i>executes or causes to be executed</i> the specified derivatives contract through an individual" means. Would this include a salesperson and if so would it be determined based on whether the particular individual made the decision to enter into the trade? In this connection, what is the difference between "executing" and "causing to be executed"?</p> <p>We note that the proposed amendments to Section 125(3)(c) of the SFA only refers to "an individual whose place of employment is located in Singapore" whereas the definition of "traded in Singapore" in the Securities and Futures (Reporting of Derivative Contracts) Regulations is more extensive and refers to "the execution of the derivatives contract by a trader (a) whose place of employment is located in Singapore and who conducts, on behalf of a specified person, activities relating to the execution of derivatives contracts in Singapore; or (b) who (i) for a period of not less than 30 days immediately before the date of the</p>
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			<p>execution of the derivatives contract, conducts or is authorised to conduct, on behalf of a specified person, activities relating to the execution of derivatives contracts in Singapore; and (ii) is physically in Singapore at the time of the execution of the derivatives contract."</p> <p><b>Recommendation:</b> We query if this was deliberate and request for clarification as to why the distinction has been made. We would also be grateful if the MAS would clarify if this amendment would mean that a "specified derivatives contract" executed by an individual who is employed in Singapore must be reported even if the individual is outside Singapore at the time the trade is executed (e.g. a dealer employed in Singapore who goes to his London office for a week and executes a trade there). We suggest that the inclusion of "<i>whose place of employment is located in Singapore</i>" be deleted as the "traded in Singapore" concept is already covered in the definition of what constitutes a "specified derivative contract".</p> <p>We would be grateful if MAS could confirm the rationale behind the deletion of Section 125(5) of the SFA is to confirm that both parties to a specified derivatives contract have an obligation to report, and will have to report (either by itself or on its behalf by another person) notwithstanding that one counterparty</p>
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			to the specified derivatives contract has already reported the relevant information.
18.	The MAS has proposed to lift banking confidentiality in the SFA to permit financial institutions to report customers' information for the purposes of complying with the MAS' and specified foreign jurisdictions' trade reporting obligations.	Section 125(6A) of Part VII of the SFA deals with banking confidentiality.	<p><b>Recommendation: We would suggest that the MAS make the following changes:</b></p> <p><del>...shall not, upon such disclosure or reporting, be treated as being in breach of any restriction imposed by any prescribed written law or any rule of law, or in each case, any requirement imposed thereunder or any rule of law upon the disclosure or reporting of such information."</del></p> <p>We note that any specified person who discloses or reports any information pursuant to subsections Sections 125(6A)(a), (b) and (c) of Part VIA of the SFA shall not, upon such disclosure or reporting, be treated as being in breach of any restriction imposed by any prescribed written law or any requirement imposed thereunder or any rule of law upon the disclosure of reporting of such information.</p> <p>We would be grateful if the MAS could confirm whether what is prescribed as "written law" in Section 125(6A) of Part VII of the SFA is the same as the meaning of "written law" as defined in Part I of the Interpretation Act (Cap. 1), which refers to "the Constitution and all previous Constitutions having application to Singapore and all Acts, Ordinances and</p>

			<p>enactments by whatever name called and subsidiary legislation made thereunder for the time being in force in Singapore" (i.e. Singapore legislation only).</p> <p>We would be grateful if the MAS could confirm whether "rule of law" in Section 125(6A) of Part VII of the SFA refers only to Singapore "rule of law". Firms may still be unable to report due to non-Singapore law (e.g. laws which the counterparty is subject to may prohibit reporting). Will the MAS continue to offer a masking relief as set out in Regulation 11(1)(a) of Part II of the Securities and Futures (Reporting of Derivative Contracts) Regulations?</p> <p>We would be grateful if the MAS could clarify whether "foreign reporting obligations" in Section 125(6A)(c) of Part VII of the SFA would apply to a wide range of jurisdictions or only those of major jurisdictions such as that of the United States, Hong Kong, Australia and the European Union.</p> <p><b>Recommendation: We request that the MAS provide a list of jurisdictions to be covered under Section 125(6A)(c) of Part VII of the SFA, as well as for adequate time to consider and comment on the list and further that sufficient time be given to adapt to any</b></p>
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			<b>changes required.</b>
19.	Exemption from the reporting obligations in Section 125 of the SFA	<p>The MAS has introduced a new Section 129A(4A) of Part VIA of the SFA which states that:</p> <p>"(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section."</p>	We would be grateful if the MAS could clarify how any additional, variation or revocation of any condition or restriction imposed under Section 129A is to be made. Will it be made by regulations (if under Section 129A(1)) and by notice (if under Section 129A(2))?
<b>5. Amendments to Part VIB (Clearing of Derivative Contracts) of the SFA</b>			
20.	Extra-territorial application of the clearing obligation under Part VIB of the SFA	The MAS has proposed in the MAS Consultation Paper on the Proposed Regulation of OTC Derivatives published in February 2012 (and as supplemented by the consultation paper published in August 2012) that a specified derivative contract would be subject to the clearing obligation where one party is resident or has a presence in Singapore and is subject to the clearing mandate and the other party would have been subject to the clearing mandate if it had been resident or had a presence in Singapore.	<p>We note that the clearing obligation has extraterritorial application in relation to a party that is not resident or having a presence in Singapore but "would have been subject to the clearing mandate if it had been resident or had a presence in Singapore".</p> <p><b>Recommendation:</b> We request that the proposed clearing obligations to be implemented via subsidiary legislation be open to consultation and that adequate time is provided for us (and other industry participants) to provide feedback on the same in order that we have had sufficient time to consider the consequences of the subsidiary legislation or changes thereto.</p>
21.	Exemption under Section 129H from the clearing obligations in Section 129C of the SFA	The MAS has introduced a new Section 129H(4A) of Part VIA of the SFA which states	We would be grateful if the MAS could clarify how any additional, variation or revocation of any condition or restriction imposed under

		that:  "(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section."	Section 129H is to be made. Will it be made by regulations (if under Section 129H(1)) and by notice (if under Section 129H(2))?
<b>6. New Part VIC (Trading of Derivative Contracts) of the SFA</b>			
22.	The MAS has proposed to introduce a legislative framework for the identification of derivative contracts which would be subject to the trading mandate.	Part VIC ( <i>Trading of Derivative Contracts</i> ) contains the legislative framework in relation to the trading obligations of derivative contracts. Part VIC mirrors the legislative framework for clearing obligations in Part VIB of the SFA.	<p>We support the MAS' assessment that it is not necessary to introduce a trading regime for OTC derivatives for now and that the MAS will continue to monitor developments and conduct detailed analysis to determine the appropriate conditions to impose a trading mandate.</p> <p><b>Recommendation:</b> We request that the proposed trading obligations to be implemented via subsidiary legislation be open to consultation and that adequate time is provided for us (and other industry participants) to provide feedback on the same in order that we have had sufficient time to consider the consequences of the subsidiary legislation or changes thereto. This will help to minimise market disruption and fragmentation. We also request that the MAS consider and confirm how any potential trading mandate will interact with any potential clearing mandate.</p>
<b>7. New Part VIIA (Short Selling) of the SFA</b>			

(a) Marking of short sell orders			
23.	<p>The MAS has proposed to introduce a new Part VIIA on Short Selling in the SFA, which sets out the regulatory framework for marking of short sell orders, in order to give regulatory certainty to the current practice and clarify that the onus to mark short sell orders lies with the market participant. Further, the SGX will continue to administer the requirement to mark short sell orders.</p>	<p>The MAS has introduced a new Part VIIA (<i>Short Selling</i>) of the SFA which contains the legislative regulatory framework in relation to the marking of short sell orders. The relevant provisions are in Section 137ZH (<i>Interpretation of this Part</i>) which contains, <i>inter alia</i>, the definition of "short position" and Section 137ZJ (<i>Disclosure of orders to short sell</i>) of Part VIIA of the SFA. Section 137 ZJ in particular specifies that the onus to mark short sell orders lies with the market participant. This disclosure needs to be made to any approved exchange.</p>	<p>We note that the proposed new Part VIIA refers to a "specified capital markets product" which is defined as "any capital markets product listed or to be listed on an approved exchange that is, or that belongs to a class of capital markets products that is, prescribed by the Authority by regulations made under section 137ZM for the purposes of this definition". As "capital markets product" is proposed to be defined "any securities, unit in a collective investment scheme, derivative contract, spot foreign exchange contract for the purposes of leveraged foreign exchange trading, and such other products as the Authority may prescribe by regulations made under section 341 for the purposes of this paragraph", it would appear that the proposed new Part VIIA would apply not only to listed securities and collective investment schemes but also to listed derivatives contracts and "spot foreign exchange contract for the purposes of leveraged foreign exchange trading". We would be grateful if the MAS would confirm if this is the intention of Part VIIA. We understand that OTC derivatives contracts (which are not listed) would not be subject to the short selling rules.</p>
(b) Reporting of net short position value			

24.	The MAS has proposed that a seller will be regarded as having a short position if his interest in a capital markets product is less than what he has sold.	The MAS has introduced a new Section 137ZH ( <i>Interpretation of this Part</i> ) of Part VIIA of the SFA, in which subsection (1) sets out the definition of "short position" in relation to a specified capital markets product, being "a position where the quantity, volume or value of the specified capital markets product which a person has an interest in is less than the quantity, volume or value of the specified capital markets product which the person has an obligation to deliver under an agreement or arrangement, and such quantity, volume or value of the specified capital markets product is determined in accordance with the criteria, methods or formulas, prescribed by the Authority by regulations made under section 137ZM for the purposes of this definition". Section 137ZM of Part VIIA of the SFA relates to the MAS' power to make regulations.	<p>The new Sections 137ZH and 137ZM accurately reflect the MAS' stated aims.</p> <p>We note that the MAS has not released any regulations in relation to the criteria, methods or formulas for determining the quantity, volume or value of the specified capital markets products.</p>
25.	The MAS has proposed to set out reporting requirements for participants whose net short position exceeds a threshold prescribed by the MAS. Detailed requirements on the calculation of net short positions, reporting thresholds and exemptions will be set out in regulations, and separately consulted on at a later date.	The MAS has introduced a new Section 137ZK ( <i>Reporting of short position</i> ) of Part VIIA of the SFA, which sets out in subsection (1) the reporting requirements for participants whose "short position in relation to any specified capital markets product is equivalent to or more than the short position threshold prescribed by the Authority".	The new Section 137ZK accurately reflects the MAS' stated aims. However, in the responses to the February 2014 Consultation Paper on Review of Securities Market Structure and Practices (" <b>February 2014 Consultation Paper</b> "), the MAS noted that the value threshold for short position reporting would be S\$1 million, and the percentage threshold would be 0.05%. The current Consultation Paper says that these are yet to be prescribed, but there is no reflection of whether these

			<p>earlier figures would be retained.</p> <p>The February 2014 Consultation Paper also noted that all derivatives would be excluded from the scope of reporting. The current Consultation Paper and Annex 1 note that the class of "specified capital markets products" is yet to be prescribed. There is no reflection of whether all derivatives will continue to be excluded.</p> <p>We note that the MAS has not released any draft regulations in relation to the detailed requirements on the calculation of net short positions, reporting thresholds and exemptions.</p> <p><b>Recommendation: We request that the MAS provide sufficient time to consider and comment on the proposed regulations.</b></p>
26.	The MAS has proposed to vest itself with the power to publish information on aggregate short positions furnished to the MAS.	The MAS has introduced a new Section 137 ZL ( <i>Power of the Authority to publish information</i> ) of Part VIIA of the SFA, which states that "The Authority may, in such form and manner and at such frequency as it thinks fit, publish the information or any part of the information, reported to the Authority under section 137ZK(1)."	<p>The new Sections 137ZH and 137ZK accurately reflect the MAS' stated aims.</p> <p>The MAS should clarify where such information will be published, and whether any prior notice will be given to participants to which such information may concern.</p> <p>We note that in the MAS' responses to the February 2014 Consultation Paper, the MAS noted that "prescriptive regulations may not be the most effective means" and that a market</p>

			<p>solution should be adopted.</p> <p>We would be grateful if the MAS could advise how these powers would interact vis-à-vis the market solution.</p>
<b>8. Amendments to Part XII (Market Conduct) of the SFA</b>			
27.	The MAS proposes to make clear the policy intent behind Section 199, and to clarify that there is no requirement of material price impact under Section 199 before a contravention can be established.	The MAS has not proposed any amendments to Section 199.	<p>We query whether the proposed clarifications will be made via guidelines or a new definition in the SFA on what is "material" in terms of an "important or significant aspect of the statement", as the same is being proposed for the concept of "common investor".</p> <p>We believe that such a new definition or guidelines will be useful in determining what amounts to a "material" false and misleading particular.</p> <p>We would be grateful if the MAS could confirm its intentions for the provisions of Section 200, 201A and 201B to cover all derivatives as "derivatives contracts" is used.</p>
28.	The MAS proposes to introduce a new definition for "persons who commonly invest in securities" under Section 214 of the SFA, and to issue guidelines to provide MAS' policy intent and guidance as to the interpretation of that definition.	The MAS has not proposed any amendments to Section 214 to introduce a definition for "persons who commonly invest in securities".	We note that the proposed revisions to the SFA are primarily based on the new definitions of "securities", "securities-traded derivatives contract" and "units in a collective investment scheme" which feature in the proposed revisions to Sections 218 and 219 of the SFA.

			As such, we believe it will be helpful if the definitions and guidelines to be introduced clarifies if the product knowledge or trading history of an individual in relation to a different product type will have an impact on the criteria in determining whether a person is a "common investor" in the specific product which forms the subject matter of the insider trading charge.
29.	The MAS proposes to amend Sections 218(3) and 219(3) of the SFA, which prohibits the disclosure of information by an insider to persons who the insider knows, or ought reasonably to know, that the other person would be likely to trade in the securities or procure another person to trade in the securities (the " <b>Prohibition</b> "), where the trading in the securities is "permitted on the securities market of a securities exchange or futures market of a futures exchange".	The proposed amendments to Sections 218(3) and 219(3) of the SFA appear to extend the Prohibition to non-exchange traded securities or derivatives contracts. This is because the definitions of "securities" and "securities-based derivatives contract" are not limited to exchange-traded products.	<p>We note that under the existing regime, the Prohibition applies only to securities where trading in them is "permitted on the securities market of a securities exchange or futures market of a futures exchange".</p> <p>We would be grateful if the MAS could clarify or provide guidance on the policy and intent behind the change. This will aid in the interpretation of the revised sections and the extent of the Prohibition.</p>
<b>9. Amendments to Part XIII (Offers of Investments) of the SFA</b>			
30.	<p>The MAS has proposed to include in Section 239 of the SFA a definition of "investments", which would include "securities" (as defined in Section 4 of the SFA to include debentures of a government, corporation, body unincorporated, partnership or business trust) as well as "securities-based derivative contracts".</p> <p>The MAS has also proposed to include in Section</p>	The MAS has deleted the definition of "debenture".	<p>We would suggest that the MAS amend both the definitions of "investments" and "relevant debentures" in Section 239 of the SFA to exclude cheques, letters of credit and any other orders for the payment of money to align it with the current definition of "debentures" that is being deleted.</p> <p><b>Recommendation: The inclusion of</b></p>

	239 of the SFA a definition of "relevant debentures", which excludes certain promissory notes.		<b>"securities-based derivative contracts" would mean the inclusion of bilateral contracts (e.g. OTC derivative contracts in relation to securities). We believe this should not be the intention and request that the definition of investments be amended so that only "securitised" derivative contracts are included (e.g. warrants).</b>
31.	The MAS has proposed to introduce a new Subdivision 2 – <i>Registration or Recognition of Business Trusts</i> , and a new Section 239AA ( <i>Requirement for registration or recognition</i> ) of the SFA.		We would suggest that the MAS change the title of the new Subdivision 2 to "Recognition of Business Trusts", as this subdivision does not provide for details on how a business trust can be registered – this would be provided for in the Business Trusts Act, Chapter 31A of Singapore. This amendment would also bring the title of this subdivision in line with the current title of the existing relevant subdivision in the SFA.
32.	The MAS has proposed to amend Section 240(5) of the SFA.		We would suggest that the amendments to Section 240(5) of the SFA should be modified to make it clear that no person shall make any offer of units or derivatives of units in a business trust that has not been formed or does not exist (as currently contained in Section 282C(8) of the SFA), as the definition of "entity" under the SFA does not include a trust.
33.	The MAS has proposed to amend Section 240(15) of the SFA.		We would suggest that the amendment to Section 240(15) of the SFA should be modified



			in line with the amendments proposed to be made in Section 242(4). This is to include references to the trustee-manager and the business trust, where appropriate (as currently contained in Section 282(C)(20) of the SFA).
<b>10. Transfer of Regulation of Commodity Derivatives from CTA to SFA</b>			
34.	<p>The MAS has proposed to transfer the regulatory oversight of commodity derivatives under the CTA to the SFA.</p> <p>Regulatory oversight of spot commodity trading will continue to be retained under the CTA and administered by IE Singapore.</p>	<p>The proposed definition of "derivative contract" refers to "one or more underlying things", which includes a "commodity".</p> <p>Accordingly, the new Part II (<i>Organised Markets</i>), Part III (<i>Clearing Facilities</i>) and Part IV (<i>Holders of Capital Markets Services Licence and Representatives</i>) of the SFA and the licensing exemptions specified in the SF(LCB)R which refer to derivative contract will apply to commodity derivatives, and therefore, the regulatory oversight of commodity derivatives are now under the MAS.</p> <p>The term "commodity" in the CTA is amended to expressly reference spot commodity trading only.</p>	<p>We note from the February 2012 joint consultation paper by IE Singapore and the MAS that the intention is to streamline licensing and compliance requirements to one authority.</p> <p>We welcome this initiative to streamline the licensing process as it provides greater clarity and efficiency to the industry.</p> <p>We note the MAS' intention to exclude physically-settled commodity forward contracts from the scope of regulation of the SFA. Further, we note that the MAS will introduce further regulations in relation to the transitional arrangements for persons which are currently licensed to deal in OTC derivatives under the CTA.</p> <p><b>Recommendation:</b> We request that the exclusion of physically-settled commodity forward contracts from the scope of regulation of the SFA be set out in subsidiary legislation (or if time permits, in</p>

			<p>the amendment legislation) and in such connection we request that adequate time be given to consider and comment on such new regulations. Further, please provide sufficient time for firms to adapt to any changes required.</p>
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