By E-mail

Capital Markets Intermediaries Department III
Monetary Authority of Singapore
10 Shenton Way
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10 July 2015

Dear Sirs and Madams

Policy Consultation on Regulatory Framework for Intermediaries Dealing in OTC Derivative Contracts, Execution-Related Advice, and Marketing of Collective Investment Scheme

The Asia Securities Industry & Financial Markets Association ("**ASIFMA**"), FIA Asia ("**FIA**") and the International Swaps and Derivatives Association, Inc. ("**ISDA**") welcome the opportunity to provide feedback to the Monetary Authority of Singapore ("**MAS**") on its June 2015 Policy Consultation on Regulatory Framework for Intermediaries Dealing in OTC Derivative Contracts, Execution-Related Advice, and Marketing of Collective Investment Scheme (the "**Consultation Paper**").

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.

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.

ISDA's pioneering work in developing the ISDA Master Agreement and a wide range of related documentation materials, and in ensuring the enforceability of their netting and collateral provisions, has helped to significantly reduce credit and legal risk. ISDA has over 800 member institutions from 67 countries and has been a leader in promoting sound risk management practices and processes, engaging constructively with policymakers and legislators globally to advance the understanding and treatment of derivatives as a risk management tool.

Executive Summary

We are fully supportive of regulatory reform that will assist in the development and strengthening of global capital markets. Further, we appreciate and commend the MAS for continuing to engage with the industry throughout the various consultation papers.

In developing its proposals, we urge the MAS to continue observing the reforms in the region and their impact on those markets, and to continue to engage in international regulatory coordination and cooperative efforts for current and future legislative reforms with the aim of achieving cross-border harmonisation of such regulations. Further, we urge that the MAS recognise industry participants' regulatory compliance with "equivalent" domestic or international regulatory regimes (where applicable), as sufficient for compliance under Singapore laws, to minimise duplicative and potentially inconsistent or conflicting regulatory requirements.

We 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. 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.

We welcome further industry discussions and consultation with the MAS as we move forward in this process.

ASIFMA, FIA and ISDA's responses

We set out our detailed responses to the proposed amendments contained within the Consultation Paper in Appendix 1 of this response letter. Any terms not defined in Appendix 1 are as defined above or in the Consultation Paper.

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 Trevor Clark, Manager of ASIFMA at tclark@asifma.org, Phuong Trinh, General Counsel of FIA Asia at ptrinh@fiaasia.org and Keith Noyes, Regional Director, Asia Pacific of ISDA at knoyes@isda.org or Erryan Abdul Samad, Counsel, Asia of ISDA at eabdulsamad@isda.org if you have any questions.

Yours sincerely

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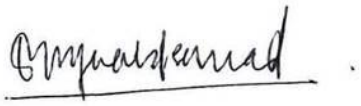

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APPENDIX 1

ASIFMA's, FIA's and ISDA's Responses to the Consultation Paper

No.	Consultation Question	ASIFMA / FIA / ISDA Comments
General Responses		
		The MAS has referred to "retail investors" and "non-retail investors" at various parts of the Consultation Paper. We would be grateful if the MAS would clarify the specific classes of investors it intends to capture by the term "retail investors" i.e. whether the MAS is referring to investors that are not accredited investors or institutional investors. We urge the MAS to consider the proposals and issues raised in relation to this Consultation Paper in light of industry participants' responses to the February Consultation Paper. In particular, we would draw the MAS' attention to industry participants' responses to the proposed definitions of "derivative contracts" and "securities-based derivatives contracts" and the proposed licensing exemptions for OTC intermediaries. As the proposed changes would impact upon various aspects of the Securities and Futures Act (Cap. 289) ("**SFA**"), Securities and Futures (Licensing and Conduct of Business) Regulations ("**SF(LCB)R**") and the Financial Advisers Act (Cap. 110) ("**FAA**"), we request that the MAS provide a longer transition period for industry participants to put in place the necessary frameworks and controls to ensure compliance. We also request that the proposed requirements to be implemented via subsidiary legislation be open to consultation and that adequate time be provided to industry participants to consider the consequences of the proposals and to provide feedback. As a general comment, we also request that the MAS recognise industry participants' regulatory compliance with "equivalent" domestic or international regulatory regimes such as the European Market Infrastructure Regulation ("**EMIR**")[1] or the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**") (where applicable),

[1] Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July on OTC derivatives, central counterparties and trade repositories.

		as sufficient for compliance with the requirements under the SFA. This is to avoid having the CMS licensee being subject to duplicative requirements. We would be grateful if the MAS would provide clarification on the types of entity it intends to capture when referring to "financial institutions" in the Consultation Paper.
PART A: REGULATORY FRAMEWORK FOR OTC INTERMEDIARIES		
A. Admission Criteria		
Q1	The MAS seeks views on the proposed admission criteria for intermediaries dealing in over-the-counter ("**OTC**") derivative contracts ("**OTC Intermediaries**").	We note that the industry had requested that persons who deal in OTC commodity derivatives with expert investors (notwithstanding the proposed deletion of the expert investors concept under the Consultation Paper on Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets) be exempted in their responses to the consultation on Proposed Amendments to the Securities and Futures Act. Persons who deal in such products as part of their business have a high degree of expertise even if they may be trading via a vehicle that does not meet the S$10 million net asset test, as prescribed under Section 4A(ii) of the SFA. The current proposals as set out in the Consultation Paper should be considered in light of the MAS' responses to the industry's earlier requests. As pointed out by the MAS, as products "futurise", this may trigger new licensing activity for participants. However, we would be grateful if the MAS would provide clarification on how it intends to address any transition under the new proposals. We are concerned that the requirement for OTC Intermediaries to apply for a licence in respect of trading in futures contracts (or exchange-traded derivatives under the proposed amendments to the SFA) would result in disruption to trading activities in such products. It is the exchanges that usually drive "futurisation" of products and the timelines (as they list the products) and not the OTC Intermediaries. We would also be grateful for clarification on how exemptions to licensing requirements will be dealt with, bearing in mind that a person can carry on more than one type of activity regulated under the SFA, and whether the exemptions will be the subject of a separate consultation paper.

Q2	The MAS seeks views on the proposal to require OTC Intermediaries dealing in exchange-traded derivative contracts to have a minimum five year track record only if they serve retail investors.	No comments.
B. Business Conduct Requirements		
		We assume that the proposed business conduct requirements would apply to CMS licensees in respect of dealing in OTC derivative contracts and exempt persons listed in Regulation 54 of the SF(LCB)R that deal in OTC derivative contracts ("**exempt persons**") and not other OTC Intermediaries (for instance, where such persons benefit from an exemption under Regulation 14 of the SF(LCB)R). We would be grateful if the MAS could confirm this. We have assumed, and would be grateful if the MAS would confirm, that the proposed business conduct requirements will only apply to transactions which are booked into: (i) MAS licensed entities; and (ii) exempt persons, and in the case of the above persons that are foreign incorporated financial institutions, only their Singapore branches. We would be grateful if the MAS would confirm that where the CMS licensee / exempt person: (i) is the advisory or the marketing entity and not the booking entity; or (ii) enters into OTC derivatives transactions as agent on behalf of a booking entity (whether or not such booking entity

		is based in Singapore), and the booking entity has complied with "equivalent" risk mitigating requirements in respect of the same OTC derivative transaction under its domestic or an international regulatory regime such as EMIR or Dodd-Frank (if applicable), that this be regarded as sufficient for compliance with the requirements under the SFA. This is to avoid having the CMS licensee / exempt person being subject to duplicative requirements. This would be particularly relevant for fund / asset managers that manage or sub-manage, for example, Singapore recognised UCITS funds. We propose that the definition of "booked in Singapore" used in the Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013 be adopted in this regard. In other words, the entry of the derivatives contract on the balance sheet or profit and loss accounts of a person whose place of business is in Singapore.
Business Conduct Requirements under the SF(LCB)R		
Q3	The MAS seeks views to extend the following business conduct requirements to OTC Intermediaries: (i) Regulation 13 of the Securities and Futures (Licensing and Conduct of Business) Regulations ("**SF(LCB)R**") on	Banks licensed under the Banking Act ("**Singapore Banks**") are currently exempt from the requirement to hold a CMS licence under the SFA, but are required to comply with the provisions listed in Regulation 54(1) of the SF(LCB)R, including Regulation 13(b)(ix) of the SF(LCB)R. We would be grateful if the MAS could confirm that Singapore Banks carrying on the proposed regulated activity of "dealing in capital markets services products" will continue being exempt from the requirements imposed under Regulation 13 of the SF(LCB)R except for Regulation 13(b)(ix) of the SF(LCB)R. We note that a number of industry participants would already have the measures listed in paragraphs 3.2(a) to (e) of the Consultation Paper in place for compliance with the regulatory requirements of their home regulators or other international requirements such as EMIR or Dodd-Frank (where applicable). We request that the MAS recognise industry participants' regulatory compliance with "equivalent" domestic or international regulatory regimes (where applicable), as sufficient for compliance with the requirements under the SFA. This is to avoid having the CMS

	risk management and controls; and (ii) Regulation 46 of the SF(LCB)R on the presentation and contents of advertisement.	licensee being subject to duplicative requirements. We further request that the proposed extension of Regulation 46 of the SF(LCB)R to OTC Intermediaries in relation to OTC derivatives products be open to consultation and that adequate time be provided for industry participants to consider the consequences of the amended regulation and provide feedback.
Q4	The MAS seeks views on the proposals: (i) To require Capital Markets Services ("**CMS**") licensees dealing in capital markets products to disclose (a) the material risks of the product, and (b) whether the CMS licensee is acting as a principal or an agent to the customer or counterparty; and	As noted by the MAS in paragraph 1.3 of the Consultation Paper, "*the OTC derivative market is dominated by sophisticated and institutional players with very little retail participation*". Given the sophisticated nature of the OTC derivative market, we propose that the MAS extend the exemption from the proposed risk disclosure requirements to CMS licensees (and exempt persons) when dealing with or for: (i) accredited investors; (ii) investors managed by private banks under an exemption granted to them by the MAS under Section 100(2) of the FAA; and (iii) institutional investors. In addition, the time-sensitive nature of OTC derivative transactions renders it both impractical and time-consuming for written acknowledgements to be obtained from all customers prior to a CMS licensee / exempt person entering into a contractual relationship with a customer. If CMS licensees / exempt persons are not exempted from the risk disclosure requirements in their entirety in respect of investors described at (i) to (iii) above, we request that the MAS exempt CMS licensees / exempt persons from the requirement to obtain written acknowledgments from such investors. To the extent that foreign-incorporated industry participants already have risk disclosure requirements in place for

		compliance with the regulatory requirements of their home regulators or international requirements such as EMIR or Dodd-Frank, we further request that the MAS recognise industry participants' regulatory compliance with the disclosure requirements under "equivalent" domestic or international regulatory regimes (where applicable), as sufficient for compliance with the requirements under the SFA. This is to avoid having the CMS licensee / exempt person being subject to duplicative requirements. We would be grateful if the MAS would confirm that the risk disclosure requirements would only apply to new transactions with new customers on-boarded after the implementation of the relevant revised rules and that the MAS is not expecting a remediation exercise of existing customers. We would be grateful if the MAS would clarify how the requirement to obtain an acknowledgement of a risk disclosure would apply to new customers and whether the risk disclosures to be provided to a customer would be transaction or product specific. We would also be grateful if the MAS would clarify whether the requirement to provide a risk disclosure document to customers prior to account opening can be satisfied by providing a customer a set of high-level risk disclosure documents on the different types of products offered by an industry participant as part of such entity's account opening pack. We would be grateful if the MAS would provide further information on the types of OTC derivative contracts it would consider as being "transacted primarily with non-retail counterparties" as referred to in paragraph 3.8 of the Consultation Paper. We would be grateful if the MAS would confirm if it intends to replace the existing Form 13 and 14 Risk Disclosure Statements in view of the proposed new definition of "capital markets product", and if so, we request that the draft revised forms be provided for review and comments.
	(ii) Not to apply the risk disclosure requirement when CMS licensees deal	We agree that the disclosure requirement should not apply when CMS licensees deal with their related entities or licensed financial institutions.

	with their related entities or licensed financial institutions.	
Segregation of Customer's Moneys and Assets		
Q5	The MAS seeks views on the following proposals: (i) To extend Parts III and IV of the SF(LCB)R to CMS licensees dealing in centrally-cleared OTC derivative contracts;	Singapore Banks are currently exempt from the requirement to hold a CMS licence under the SFA, but are required to comply with the provisions listed in Regulation 54(1) of the SF(LCB)R, including Regulations 39(3), (4) and (5), 42, 44, 45, 46, 47 and 47B to 47E of the SF(LCB)R. We would be grateful if the MAS could confirm that Singapore Banks dealing in centrally-cleared OTC derivative contracts will continue being exempt from the requirements imposed under Part IV of the SF(LCB)R except for the specific regulations listed above. We would be grateful if the MAS would confirm that its intention is for the extension of Parts III and IV of the SF(LCB)R to CMS licensees dealing in centrally-cleared OTC derivative contracts to only apply to the Singapore branch of a foreign incorporated financial institution licensed in Singapore insofar as such licensed branch acts as a clearing broker and books centrally-cleared OTC derivative contracts in Singapore. We seek further clarification from the MAS as to whether its intention is to extend Parts III and IV of the SF(LCB)R so that it is mandatory for CMS licensees to place money received from or on account of customers in respect of centrally-cleared OTC derivative transactions in trust accounts. In particular, we are concerned that such extension (in particular the application of Section 25(1)) would prohibit a CMS licensee from obtaining collateral from its customers in respect of centrally-cleared OTC derivative transactions by way of title transfer[2], which is a practice that is currently engaged by various market participants. A requirement to have customer monies placed in a trust account will be a deviation from such market practice and will require substantial time and cost to re-paper existing

[2] For instance, under the English-law governed ISDA Credit Support Annex, collateral would be delivered by way of title transfer.

		contractual relationships. We would also add that a mandatory requirement to have collateral deposited into trust or custody accounts could have significant cost implications for the customer, and a customer may wish to opt out of such arrangement. In addition, we note that there is currently little guidance as to how trust and custody arrangements (and in particular, third-party custodian arrangements) would be treated in Singapore in the event of a customer's default. We urge the MAS to consider the practical implications of imposing such requirements to ensure that these do not lead to unintended consequences.
	(ii) Where a CMS licensee offers individual client segregation, to require the CMS licensee to disclose to its customers the costs associated with and the level of protection accorded by individual client segregation vis-à-vis omnibus segregation; and	We would be grateful if the MAS would confirm that the relevant CMS licensee would be able to determine the level of granularity of information to be disclosed to its customers, in its reasonable discretion or in line with market practice.
	(iii) Not to require CMS licensees to deposit moneys or assets of customers who have opted from	We do not have objections to this proposal. We note that paragraph 3.14 of the Consultation Paper states that "*the CMS licensee will...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*". Please could the MAS clarify whether CMS licensees would nonetheless be

	individual client segregation into a trust account separate from other customers who have not opted so.	required to "legally segregate" customer money and assets (e.g. the CME Legal Segregation with Operational Commingling ("**LSOC**") account structure) despite operationally commingling these moneys and assets.
Q6	The MAS seeks views on the following record keeping requirements in relation to OTC derivative transactions: (i) To maintain the	We would be grateful if the MAS would clarify whether "pre-execution information" (referred to in paragraph 3.16(b)(i) of the Consultation Paper) should only include information (such as quotes, bids, offers, instructions and the date and time of instructions) that is related to the final executed transaction or if information related to the on-going negotiation of the transaction should also be recorded and maintained.[3]

[3] We note that a similar requirement recently proposed by the HKMA / SFC in Hong Kong i.e. the requirement for a reporting entity to keep records "*evidencing the communications and instructions that resulted in the specified OTC derivative transaction being executed*" has since been removed under the draft rules set out in the May 2015 Conclusions on Further Consultation on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules. This was in response to industry feedback that this would encompass a wide of information that may be hard to retain in a manner that is readily searchable and identifiable by reference to the relevant OTC derivative transaction and counterparty and hence particularly onerous e.g. audio records, chat room messages, email messages. It was also recognised that it could be challenging to collate pre-execution information as such data would have to be collated once a trade eventuates although not all pre-execution information would relate to an executed trade, and that this would make the requirement particularly onerous. The HKMA / SFC proposals are, in brief, as follows:

(i) "*Records evidencing the existence and purpose of the specified OTC derivative transaction (including all agreements relating to the transaction).*

(ii) *Records showing particulars of the execution of the specified OTC derivative transaction, including orders, ledgers and confirmations of the transaction.*

(iii) *Records showing particulars of the terms and conditions of the specified OTC derivative transaction, including particulars relating to all payments and margin requirements relating to the transaction.*

(iv) *Records sufficient to demonstrate that the transaction information submitted to the Monetary Authority under Division 3 of Part 2 of these Rules was accurate.*"

	records set out in paragraph 3.16 of the Consultation Paper for each OTC derivative transaction; and	
	(ii) To maintain the records for the retention periods set out in paragraph 3.17 of the Consultation Paper.	It could be operationally onerous and costly to maintain records of oral communications relating to pre-execution information for a period of one year. We request that the MAS note the difficulties we have highlighted in our response at Q6(i) above in relation to the searching of records of oral communications by transaction or counterparty. We also note that it may be challenging to identify the point at which business relations are terminated. For instance, business relations could be terminated with the Singapore branch of an entity but not with its other branches in Europe. We hence propose that the MAS adopt the retention periods under Dodd-Frank i.e. that (i) all records are to be kept for five years from the date the record is made; and (ii) records of transactions are to be kept for at least five years after the maturity, termination, transfer, etc. of the transaction. In relation to records for oral communications (not relating to pre-execution information), we would be grateful if the MAS would provide clarification on the period for which such records must be retained and confirm that these records do not need to be maintained for a period of five years where already available in electronic or physical format.
Risk Mitigating Requirements for Non-Centrally Cleared Derivatives		
Q7	The MAS seeks views on the requirement for CMS	In this regard, we would highlight that documentation that governs the trading relationship between counterparties should be a matter for commercial consideration and bilateral negotiation between the parties, especially where no

	licensees to have policies and procedures to execute written trading relationship documentation with their counterparties prior to or contemporaneously with executing a non-centrally cleared OTC derivative transaction; such documentation including all material terms governing the trading relationship between the counterparties, and which	retail counterparties are involved. In addition, the current OTC derivatives regulatory regimes of various other major jurisdictions[4] (e.g. EU[5], Hong Kong[6] and Australia) do not impose mandatory requirements on parties to execute written trading relationship documentation. We would be grateful if the MAS would clarify what would comprise "written trading relationship documentation" and whether this refers to the documentation that governs the trading relationship between counterparties or the documentation that governs the material terms of the transactions. In the latter, we understand that it is industry practice (where not required under Dodd-Frank and related US regulation) to enter into documentary arrangements based on credit assessments and other requirements, including "long-form confirmations" and non-ISDA mini-master agreements. This involves trading with customers on a "deemed" master agreement basis where procedures are documented by internal written policies of the relevant CMS licensee and customer counterparties are aware that the trades are done on the basis of a "deemed" master agreement,

[4] We recognise that under Dodd-Frank and related US regulation, swap dealers ("**SDs**") and major swap participants ("**MSPs**") are required to have swap trading relationship documentation in place. However, we note that there is a carve-out under the Commodity Futures Trading Commission ("**CFTC**") Regulation 17 CFR Part 23 §23.504(a)(2): "Other than confirmations of swap transactions under §23.501, the swap trading relationship documentation shall be executed prior to or contemporaneously with entering into a swap transaction with any counterparty".

[5] We note that the European Supervisory Authorities ("**ESAs**") are currently consulting upon introducing a requirement for written trading relationship documentation by way of regulatory technical standards ("**RTS**") under EMIR. However, the EU proposal for trading relationship documentation is expressed to only require financial counterparties ("**FCs**"), and FCs and non-financial counterparties ("**NFCs**") that exceed the clearing requirement under EMIR ("**NFC+s**"), to put in place trading relationship documentation with other FCs and NFC+s (and, most likely, with third country entities which would be FCs or NFC+s if established if the EU). Therefore, it does not seem that the EU proposal would require FCs and NFC+s to put in place written trading relationship documentation with NFCs that fall below the clearing threshold ("**NFC-s**") or third country entities that would be NFC-s if established in the EU. If this proposal is proceeded with, the draft RTS envisage that this requirement will apply from 1 September 2016.

[6] The proposed OTC derivatives reforms in Hong Kong do not introduce any new documentation requirements, but there may be existing documentation requirements under the Code of Conduct etc.

	must be executed in writing or through other equivalent non-rewritable, non-erasable electronic means.	but the documentation itself is executed in compliance with the timing requirements for the confirmation. A regulatory requirement to enter into trading relationship documentation could lead to disputes and confusion over what would constitute a "material term" and unnecessary regulatory scrutiny over whether trading documentation contains all of the relevant "material terms". Strict documentation requirements and standards may also be burdensome when dealing with non-financial firms. We propose that the MAS remove this mandatory requirement for trading relationship documentation, and alternatively, request that the MAS permit industry participants to comply with the requirement for trading relationship documentation through "long-form confirmations". As it is not industry practice for long-form confirmations to be executed prior to the trade being executed, we propose that confirmations made in accordance with timely confirmation timelines be considered "contemporaneous execution" for the purposes of this requirement. In addition, we would be grateful if the MAS would provide guidance on the expected timeline for implementation of the risk mitigation requirements. We would also be grateful if the MAS would confirm that these requirements would not apply where "counterparties" are related entities of the CMS licensee.
Q8	The MAS seeks views on:	We request that the MAS exempt transactions between parties and their affiliates and branches from these requirements. We propose that the MAS recognise industry participants' regulatory compliance with "equivalent" domestic or international regulatory regimes, such as EMIR or Dodd-Frank (where applicable), as sufficient for compliance with the requirements under the SFA. This is to prevent the CMS licensee from being subject to duplicative requirements.
	(i) The confirmation deadlines set out in paragraph 3.23 of the	In relation to the proposed confirmation deadlines, such deadlines would only be workable for standard OTC derivatives transactions. The proposed timing would be insufficient for more complex structured OTC derivative transactions where confirmations are manually drafted and do not follow industry standard templates. The two-way

	Consultation Paper;	execution of confirmations for such transactions could take up to T+5 or longer. We propose that the MAS permit industry participants to comply with this requirement on a "best-effort basis"[7] or provide a carve-out where the confirmation is manual or for bespoke transactions. Alternatively, we propose that the MAS require that a CMS licensee have appropriate procedures and arrangements in place to meet the confirmation deadlines instead of prescribed hard deadlines and that, if for legitimate reasons these deadlines are not achieved, the MAS should examine those procedures and arrangements and determine whether the firm has made sufficient efforts to meet the deadlines. We further propose that this requirement only apply to trades booked under the OTC derivatives intermediary and not where the OTC derivatives intermediary only acts as a marketing or trading entity without obligations to prepare or sign any confirmations. We also request, in relation to "other counterparties", that it be sufficient for the CMS licensee to provide a signed confirmation without requiring its counterparty (whether or not it is a retail customer) to provide a signed or other form of return acknowledgement. We would be grateful if the MAS would clarify whether the confirmations can be issued via electronic means (such as through e-platforms or emails) as this would facilitate expedient confirmations. As noted by the MAS in paragraph 3.23(b) of the Consultation Paper, counterparties may not be subject to MAS oversight and the CMS licensee may not be able to compel such counterparty to provide a timely confirmation. We would be grateful if the MAS would clarify how it intends to enforce these requirements and request that the MAS not penalise a CMS licensee who is unable to compel a foreign counterparty to comply with these requirements. We request that the MAS accept negative affirmation as sufficient for CMS licensees to comply with the MAS timely confirmation requirements.

[7] We note that Table 2 reflects that CMS licensees must have policies and procedures that facilitate, on a best effort basis, a two-way confirmation to be executed with other counterparties.

		We would be grateful if the MAS would clarify what timelines would apply for trades that are executed on or after 4 pm Singapore time and whether these trades would be treated as having been executed before 4 pm of the following business day. We would be grateful if the MAS would confirm that extensions of time will be provided to account for holidays in foreign jurisdictions.
	(ii) The terms required to be included in a confirmation set out in Annex 1 of the Consultation Paper; and	ISDA pro forma confirmations are widely used by industry participants and we do not propose deviating from existing practices by introducing additional terms for trade confirmation in relation to information that is not already being collected. The collection of additional information would require participants to introduce costly system enhancements. We also note that in Australia and the EU[8], the terms required to be included in a trade confirmation are not mandated. We request that parties be granted the discretion to elect their trade confirmation terms and that the proposed terms for trade confirmation listed in Annex 1 not be mandatory. At the minimum, we request that the additional terms for trade confirmation not currently included in ISDA pro forma confirmations not be mandatory. In particular, we strongly suggest that the following proposed terms for trade confirmation not be made mandatory: "Execution timestamp", "Execution venue", "Identifier of the non-reporting party", "Identifier of the reporting counterparty", "Unique Transaction Identifier" and "Unique Product Identifier".

[8] EMIR does not specify in detail the terms required to be included in a confirmation. It requires FCs and NFCs to ensure, exercising due diligence, that appropriate procedures and arrangements are in place to measure, monitor and mitigate operational risk and counterparty risk, including at least, the timely confirmation, where available, by electronic means, of the terms of the relevant OTC derivative contract. The relevant RTS states that a "confirmation" means the documentation of the agreement of the counterparties to all the terms of an OTC contract. However, a recital notes that a confirmation can refer to one or more master agreements, master confirmation agreements or other standard terms.

	(iii) The phased-in implementation timeline set out in Table 2 of the Consultation Paper.	We would be grateful if the MAS would clarify if business days refers to Singapore Business Days.
Q9	The MAS seeks views on the proposals to require CMS licensees to: (i) Enter into portfolio reconciliation agreements or arrangements with counterparties as set out in paragraph 3.26 of the Consultation Paper;	We note that paragraph 3.26 of the Consultation Paper provides that "where the counterparty is not a licensed financial institution, the MAS will require the CMS licensee to have in place policies and procedures that facilitate, on a *best effort* basis, portfolio reconciliation between the CMS licensee and the counterparty". We would be grateful if the MAS would clarify what it will consider "best effort". We note that where a CMS licensee is subject to the requirements imposed under EMIR, it will be required to apply the risk management provisions at a portfolio level for each of its clients. This may include trades booked across multiple jurisdictions. We propose that the MAS recognise industry participants' regulatory compliance with "equivalent" domestic or international regulatory regimes, such as EMIR (where applicable), as sufficient for the current purposes. Alternatively, we propose that the MAS consider, where a CMS licensee already has agreements and arrangements dealing with reconciliation on a portfolio basis, that these be regarded as sufficient for the sub-set of trades booked into Singapore to comply with the MAS' requirements.

	(ii)	Perform portfolio reconciliation according to the frequencies set out in Table 3 of the Consultation Paper;	We would be grateful if the MAS would clarify that "Daily" in Table 3 means each business day. This would be consistent with the CFTC Rules[9] and the relevant EMIR RTS[10]. We propose that the MAS recognise industry participants' regulatory compliance with "equivalent"[11] domestic or international regulatory regimes in relation to their portfolio reconciliation and dispute resolution requirements, such as EMIR and Dodd-Frank (where applicable), as sufficient for the current purposes. This would prevent a CMS licensee from being subject to duplicative requirements and reduce its compliance burden while maintaining a level playing field. Further to this, we note that it is possible that some entities that would be regarded as "other counterparties" under the MAS proposal would also be regarded under EMIR as NFC+s or third country entities that would be NFC+s if established in the EU. Where an EU FC or NFC+ trades with a third country entity that would be an NFC+ if established in the EU, a more frequent reconciliation timetable is mandated. Such "other counterparties" under the MAS proposal could therefore be subject to more frequent reconciliations under EMIR. Please also see our response at Q9(i) above.
	(iii)	Include the terms set out in Annex 2 of the	EMIR provides that portfolio reconciliation should cover key trade terms that identify each particular OTC derivative contract and should include at least the valuation attributed to each contract in accordance with Article 11(2) of

[9] For swaps between parties that are both SDs/MSPs the frequency depends on the number of swaps in the portfolio. Where the portfolio contains 500 or more swaps, portfolio reconciliation is to be performed "once each business day". For smaller portfolios the frequency is weekly or quarterly. Please see Commodity Exchange Act §23.502(a)(3)(i).

[10] Refers to "each business day".

[11] By way of illustration, we note that the CFTC has provided no-action relief for certain risk mitigation requirements, including portfolio reconciliation. The CFTC has determined that the EMIR requirements regarding portfolio reconciliation are "essentially identical" to those required by the CFTC. As a result, compliance with the EMIR requirements would satisfy the CFTC requirements.

		Consultation Paper in the portfolio reconciliation; and	EMIR. A recital to the relevant RTS provides more guidance on the terms to be included in a portfolio reconciliation. It states that "such terms should include the valuation of each transaction and may also include other relevant details such as the effective date, the scheduled maturity date, any payment or settlement dates, the notional value of the contract and currency of the transaction, the underlying instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates of the OTC derivative contract." We propose that the MAS adopt a similar principles-based approach instead of prescribing the list of terms in such detail. The greater amount of flexibility this approach would afford would facilitate "future-proofing" of the proposed regulations / legislation.
	(iv)	Report promptly material disputes to the Authority as set out in paragraph 3.29 of the Consultation Paper.	We propose that the MAS recognise industry participants' regulatory compliance with "equivalent" domestic or international regulatory regimes in relation to their reporting requirements, such as EMIR[12] or Dodd-Frank (where applicable), as sufficient for compliance with the requirements under the SFA. This is to prevent the CMS licensee from being subject to duplicative requirements. Pursuant to the Singapore banking secrecy laws, CMS licensees may have to seek consent from customers prior to any disclosure of customer information to the MAS. We request that the MAS grant CMS licensees a waiver from the Singapore banking secrecy laws in this regard. We would be grateful if the MAS would confirm that its intention is for the dispute resolution requirements to only apply to trades booked into Singapore.

[12] EMIR requires FCs to report to the relevant competent authority any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or a value higher than EUR 15 million and outstanding for at least 15 business days. The European Securities and Markets Authority ("**ESMA**") has stated that, at a minimum, FCs are expected to make a monthly notification of any disputes outstanding in the preceding month. National competent authorities may, however, require more frequent reporting of outstanding disputes.

Q10	The MAS seeks views on the proposal to require CMS licensees to engage in portfolio compression of non-centrally-cleared OTC derivative contracts, where appropriate.	We propose that the MAS recognise industry participants' regulatory compliance with "equivalent" domestic or international regulatory regimes in relation to their portfolio compression requirements, such as EMIR[13] or Dodd-Frank (where applicable), as sufficient for the current purposes. This would allow CMS licensees to adopt a consistent approach to portfolio compression and prevent a CMS licensee from being subject to duplicative requirements. The requirement for portfolio compression is most relevant for CMS licensees that operate large volumes of trades. We hence request that the MAS set a minimum threshold of outstanding non-centrally-cleared OTC derivatives contracts that would trigger the portfolio compression requirements and provide a carve-out for private banking customers so that this would effectively reduce systemic risk as intended. We would be grateful if the MAS would clarify what it means by "where appropriate", as such phrase could have varying interpretations whereas portfolio compression can only work with other industry participants' cooperation. We would be grateful if the MAS would confirm that it would be sufficient for a CMS licensee to put in place adequate procedures for the licensee to assess, on a regular basis, the possibility of performing portfolio compression as there may be various instances in which it may not be appropriate for parties to undertake portfolio compression. We also highlight that there are limited service providers available for multi-lateral portfolio compression and so smaller industry participants may face challenges when carrying out their portfolio compression exercises. We would be grateful if the MAS would clarify the scope of the portfolio compression requirements and whether they would apply only to transactions booked into MAS licensed entities, exempt persons, and where such entities are foreign-incorporated financial institutions, only their Singapore branches. We would also be grateful for clarification on whether new transactions arising from portfolio compression would be excluded from potential trading and clearing obligations and mandates and how this would operate with non-

[13] EMIR requires FC and NFCs with 500 or more OTC derivative contracts outstanding with a counterparty which are not centrally cleared to have in place procedures to regularly, and at least twice a year, analyse the possibility to reduce their counterparty credit risk and engage in such a portfolio compression exercise.

		Singapore counterparties.
Banks, Merchant Banks and Finance Companies		
Q11	The MAS seeks views from banks, merchant banks and finance companies on the business conduct requirements for dealing in OTC derivatives set out in paragraphs 3.2 to 3.30 of the Consultation Paper.	We agree with the business conduct requirements in general but request that the MAS exempt persons exempted from holding a CMS licence under Section 99(1) of the SFA from these requirements when dealing with their related entities. We also propose that the MAS recognise industry participants' regulatory compliance with "equivalent" domestic or international regulatory regimes in relation to their business conduct requirements, such as EMIR or Dodd-Frank (where applicable), as sufficient for compliance with the requirements under the SFA. This is to prevent the CMS licensee from being subject to duplicative requirements.
C. Capital and Financial Requirements		
Q12	The MAS seeks views on subjecting CMS licensees dealing in OTC derivative contracts to: (i) The base capital requirements set out in Table 4 of the Consultation Paper; and (ii) The RBC requirements under the Securities and	We would be grateful if the MAS would clarify whether the base capital requirements would apply in addition to existing capital requirements, or if the same capital requirements would apply to all regulated activities under the SFA.

	Futures (Financial and Margin Requirements) Regulations ("**SF(FMR)R**"), other than CMS licensees dealing in OTC derivative contracts only with non-retail investors.	
D. Representative Notification Requirement		
Q13	The MAS seeks views on the proposals to: (i) Extend the representative notification requirement to persons who act as representatives for dealing in or advising on OTC derivative contracts as set out in paragraph 5.2 of the Consultation Paper;	We support the MAS' proposal to extend the representative notification framework to persons who act as representatives for dealing in or advising on OTC derivative contracts. Given the global nature of OTC derivatives trading, we propose that the representative notification framework be extended to representatives of CMS licensees and persons exempt from the requirement to hold a CMS licence that are based outside of Singapore but who make periodic visits to Singapore to carry on dealing in OTC derivatives transactions. We would be grateful if the MAS would clarify the transitional arrangements that would apply in relation to representatives that have already been notified under the existing notification framework.

	and	
	(ii) Grandfather existing representatives as set out in paragraph 5.3 of the Consultation Paper.	We would be grateful if the MAS would clarify whether a grandfathered representative who has ceased carrying on regulated activities for a continuous period of more than a year and who has subsequently joined a Specialised Unit Serving High Net-worth Individuals will be exempt from the CMFAS requirements.
E. Transitional Arrangements		
Q14	The MAS seeks views on the proposed transitional arrangements set out in paragraphs 6.2 to 6.7 of the Consultation Paper.	We would be grateful if the MAS would provide clarification on its approach to entities and representatives previously exempted from the requirement to be licensed under the Commodity Trading Act but would, under the proposed changes, need to hold a CMS licence under the SFA. We request that the MAS provide the flexibility for such parties and related Para 9 and/or 11 arrangements to be grandfathered under the regime proposed under the Consultation Paper. We would be grateful if the MAS would confirm whether the transitional arrangements would apply to the proposed business conduct requirements or whether the proposed business conduct requirements would only apply to a CMS licensee after it has obtained its licence.
F. Paragraph 9 of the Third Schedule to the SFA and Paragraph 11 of the First Schedule to the FAA		
Q15	The MAS seeks views on the application of Paragraph 9 of the Third Schedule to the Securities and Futures Act ("**SFA**") ("**Para 9**") and Paragraph 11 of the First Schedule to the Financial	Pursuant to the February Consultation Paper, the proposed revised definition of "derivatives contract" would mean that a broader range of products would fall within the regulatory ambit of the SFA and FAA. Many of these currently unregulated products involve cross-border business with overseas-based staff advising or dealing with Singapore-based investors. Further to this, we would be grateful if the MAS would provide guidance on the following: (i) the MAS' approach to existing Para 9 and/or 11 approvals that have been granted to foreign related corporations to conduct regulated activities under the SFA and/or FAA (as the case may be), and whether

	Advisers Act ("**FAA**") ("**Para 11**") to dealing in and advising on OTC derivative contracts respectively.	such approvals will be automatically grandfathered to include dealing in and advising on OTC derivatives contracts. If no grandfathering is to be available, the transition time available for obtaining extensions to existing approvals; (ii) where extensions to existing or new Para 9 and/or 11 approvals will have to be sought, the applicable approval criteria. The current criteria set out in the Guidelines on Applications for Approval of Arrangements under Paragraph 9 of the Third Schedule to the Securities and Futures Act ("**Para 9 Guidelines**") may not be appropriate in relation to "derivatives contracts" (under the February Consultation Paper). For instance, paragraph 3.2(e) of the Para 9 Guidelines requires the Singapore Entity to ensure that its foreign related corporation is subject to proper supervision by its home regulatory authority for the activities carried out under the arrangement. However, not all of the products that fall within "derivatives contract" may currently be regulated by the relevant home regulatory authority. We note that current Para 9 and 11 arrangements may need to be revisited and business models changed, which could have a significant impact on existing business; (iii) the approach to be adopted in relation to new Para 9 and/or Para 11 applications which are submitted during the consultation phase; (iv) should the MAS decide that Para 9 and/or 11 approvals should not be applied to dealing in and advising on OTC derivative contracts respectively, the proposed alternative approach. We note that if Para 9 and/or 11 approvals are not available for the regulated activity of dealing in and advising on OTC derivative contracts, this would create an unequal playing field as between CMS licensees who are able to benefit from Para 9 and/or 11 arrangements (in relation to other types of regulated activity) and those who are not able to. We request that the MAS provide industry participants' with a longer transition period than the one-year period proposed by the MAS. The changes proposed would require industry participants to take steps to review existing documentation and potentially put in place system enhancements. These would have both time and cost implications.

PART B: OTHER PROPOSED AMENDMENTS		
G. Execution-Related Advice		
Q16	The MAS seeks views on: (i) The proposal to exempt execution-related advice ("**ERA**") in relation to listed Excluded Investment Products ("**EIPs**") from the FAA; and (ii) The proposed safeguards as set out in paragraph 8.3 of the Consultation Paper, as well as other safeguards that could be introduced.	No comments.
H. Marketing of Collective Investment Schemes ("CIS")		
Q17	The MAS seeks views on the proposals to: (i) Remove the	We generally support this proposal but would be grateful if the MAS would clarify whether existing exemptions for licensing requirements under the FAA, such as the exemption for a person who provides financial advisory services to an institutional investor, will be similarly ported over as well.

		regulated activity of "marketing of CIS" from the FAA;	We request that existing Para 11 approvals for "marketing in CIS" under the FAA automatically be grandfathered as Para 9 approvals for "dealing in securities" under the SFA.
	(ii)	Expand the scope of the SFA Dealing Exemption to allow Financial Advisers to deal in both listed and unlisted CIS if such dealing is incidental to their advisory activities;	No comments.
	(iii)	Require Financial Advisers and their representatives relying on the SFA Dealing Exemption to comply with the applicable business conduct rules as set out in paragraph 9.7 of the Consultation Paper; and	No comments.
	(iv)	Exempt licensed and registered fund	No comments.

	management companies ("**FMCs**") that market CIS managed by themselves or their related corporations from holding a CMS licence for dealing in securities.	