



Monetary Authority of Singapore

**SECURITIES AND FUTURES ACT
(CAP. 289)**

**FREQUENTLY ASKED QUESTIONS ON
THE SECURITIES AND FUTURES
(LICENSING AND CONDUCT OF BUSINESS) REGULATIONS**

Disclaimer: The FAQs are meant to provide guidance to the industry on MAS' policy and administration of the Securities and Futures Act and regulations. They do not constitute legal advice. MAS expects industry participants to retain their independent legal counsel to advise them on how their business operations should be conducted in order to satisfy the legal/regulatory requirements and to advise them on all applicable laws, rules or regulations of Singapore.

SECURITIES AND FUTURES ACT (CAP. 289)

**SECURITIES AND FUTURES (LICENSING AND CONDUCT OF
BUSINESS) REGULATIONS**

FREQUENTLY ASKED QUESTIONS

A) LICENSING

Q1 What types of activities are regulated under the Securities and Futures Act [“SFA”]?

A1 The types of activities regulated under the SFA are listed in the Second Schedule to the SFA. They are as follows:

- (a) dealing in securities;
- (b) trading in futures contracts;
- (c) leveraged foreign exchange trading;
- (d) advising on corporate finance;
- (e) fund management;
- (f) securities financing;
- (g) providing custodial services for securities.

Except for those who are specifically exempted, any person who wishes to conduct any of the above regulated activities will need to obtain the requisite licence under the SFA. [Updated in Oct 02]

Q2 What types of licences are granted under the SFA?

A2 Under the SFA, a person who wishes to carry on a business in any regulated activity is required to hold a capital markets services [“CMS”] licence for that regulated activity. A CMS licence is granted only to a corporation. An individual who conducts that regulated activity for the holder of a CMS licence is required to hold a representative’s licence for that regulated activity. [Updated in Oct 02]

Q3 My company is licensed under the SFA, and subsequently wishes to conduct financial advisory activities under the Financial Advisers Act [“FAA”]. Does my company need to apply for a Financial Adviser’s [“FA”] licence under the FAA?

A3 A CMS licence holder is an exempt Financial Adviser, i.e., it is exempted from the requirement to hold a FA licence in respect of any financial advisory activity it wishes to conduct, so long as such financial advisory activity is not its main business. However, an exempt financial adviser is required to comply with all relevant provisions in the FAA, including any regulations, notices or guidelines as may be issued under the FAA.

In addition, an exempt financial adviser is required to lodge with the MAS the following forms:

- (a) a notice of commencement of business not later than 14 days after the commencement of his business as an exempt financial adviser;
- (b) a notice of change of particulars providing any change in the particulars required to be notified under (a), not later than 14 days after the date of the change; and
- (c) a notice of cessation of business not later than 14 days after the cessation of his business as an exempt financial adviser.

[Updated in Oct 02]

Q4 My company holds a CMS licence under the SFA. If we wish to expand the scope of our business to conduct other regulated activities under the SFA that are not included in our CMS licence, what do we need to do?

A4 The company is required to apply to MAS to add regulated activities to its CMS licence. The application should be made in prescribed form, which is Form 5 pursuant to Securities and Futures (Licensing and Conduct of Business) Regulations, and submitted together with the prescribed application fee. Upon approval, the company shall return its CMS licence to MAS for cancellation, and MAS shall issue a new licence reflecting the new regulated activities to the company. The company shall commence the new regulated activities only after the new licence is issued. The expiry date of the new licence will be the same as that of the old licence.

[Updated in Jul 05]

Q5 We are a nominee company and we hold our clients' assets as part of the nominee service that we provide. Do we need to hold a CMS licence for providing custodial services?

A5 No, so long as the nominee company does not hold itself out as providing custodial services for securities, and its business is that of providing nominee services, and the holding of any customer's assets is solely incidental to the nominee services provided by the nominee company. This includes nominee companies which are set up by financial institutions to facilitate the financial institutions' custodial services whereby the nominee companies are used by the financial institutions to provide nominee services in respect of securities held on trust by the financial institutions for the customers of the financial institutions. [Updated in Oct 02]

Q6 My company holds a CMS licence for dealing in securities and trading in futures contracts. Can we operate discretionary accounts on behalf of customers?

A6 The operation of discretionary accounts on behalf of customers for the purpose of trading or investment in securities or futures contracts is considered to be fund management as it allows the persons who operate such accounts to trade and manage the investments in the account on behalf of customers. Under the SFA, fund management is defined to mean undertaking, on behalf of customers (a) the management of a portfolio of securities or futures contracts; or (b) foreign exchange trading or leveraged foreign exchange trading for the purpose of managing customer's funds.

Hence, a company that holds a CMS licence for dealing in securities or trading in futures contracts, and wishes to operate discretionary accounts on behalf of its customers, would need to apply to MAS to add the activity of fund management to its licence. Its representatives who intend to operate such discretionary accounts are required to hold representative's licences for fund management.

However, in view of the conflict of interest between dealing and fund management, a representative who is licensed to deal in securities or trade in futures contracts would not be allowed to operate discretionary accounts on behalf of his customers. This means that a company which is licensed to engage in both dealing in securities and/or trading in futures contracts and

fund management or operating discretionary accounts should have separate representatives to conduct such activities. [Updated in Oct 02]

Q7 My company holds a CMS licence to deal in securities and advise on corporate finance. What should we do if we wish to cease dealing in securities?

A7 The company is required to submit Form 7 to notify MAS of its cessation of business in dealing in securities within 14 days of the cessation. The form should indicate the list of representatives (and the licence numbers of their representative's licences) who also cease to conduct dealing in securities, and the representatives should sign against their licence number. The company should also return its CMS licence and the representatives' licences to MAS. MAS will issue a new CMS licence to the company, and where applicable, to the representatives, to reflect the remaining regulated activity of advising on corporate finance. The representatives are not required to individually lodge Form 8 to notify MAS of their cessation of business in dealing in securities. For representatives who intend to continue dealing in securities by transferring to a new principal, they should lodge Form 9 and return their licences to MAS. MAS will issue a new licence to reflect the name of their new principal. [Updated in Oct 02]

Q8 My company holds a CMS licence to conduct business in fund management. Can we execute clients' order to deal in securities that is not within the investment mandate? Can this activity of dealing in securities qualify for exemption from licensing requirement under paragraph 2(b) of Second Schedule to the SFR?

A8 If the dealing in securities is for a fund management client but is not in relation to the mandate of managing funds for that client, that activity cannot be deemed solely incidental to its business in fund management. Hence, your company would not qualify for exemption from licensing requirement under paragraph 2(b) of Second Schedule to the SFR. [Updated in Jul 05]

Q9 My company holds a CMS licence to conduct business in fund management. We also offer collective investment schemes that are managed by our related entities to our clients, on a selective basis such as clients' investment objectives. Is my company required to hold additional licences under the FAA?

A9 The marketing of CIS is a regulated activity under the FAA. A holder of CMS licence (for fund management) which also offer CIS is required to lodge with MAS a notice of commencement of business as an exempt financial adviser pursuant to Regulation 37(2) of the FAR. Please refer to Q3.

If the holder of CMS licence (for fund management) invests in CIS or any other securities in relation to the mandate of managing funds for its clients, such dealing in securities activity would be considered to be solely incidental to its fund management activity and is exempted from the requirement to hold a CMS licence for dealing in securities under paragraph 2(b) of the Second Schedule to the SFR. [Updated in Jul 05]

Q10 Do appointments of Chief Executive Officer and Directors require MAS' prior approval?

A10 The appointments of the following persons require MAS' prior approval:

- (a) Chief Executive Officer, which refers to any person, by whatever name called, who is principally responsible for the management and conduct of the business of the CMS licence holder in Singapore;
- (b) Directors who reside or are to reside in Singapore, whether or not they are directly responsible for the business of the CMS licence holder in Singapore; and
- (c) Directors who are directly responsible for the business of the CMS licence holder in Singapore, whether or not they reside or are to reside in Singapore. [Updated in Dec 03]

Q11 If the CMS licence holder's operations in Singapore is a branch, do appointments of all members of the board of directors require MAS' approval? Would there be any difference if the CMS licence holder is a Singapore incorporated company?

A11 For CMS licence holders that operate as branches, only the appointment of directors who are resident in Singapore or who are directly responsible for the licensees' businesses in Singapore would require prior approval from

MAS. For CMS licence holders incorporated in Singapore, the appointments of all directors require prior approval from MAS. This requirement applies regardless of whether the directors are executive or non-executive, resident or non-resident in Singapore as such directors are bound by certain requirements under the Companies Act.

[Updated in Dec 03]

Q12 Our company has been granted a CMS licence to carry on the business of dealing in securities. However, due to possible changes in our business plan, we have decided to hold back the commencement of the proposed activity. Can we continue to hold on to our licence?

A12 The company will have to explain to MAS why it is unable to commence business in the regulated activity of dealing in securities, and obtain MAS' approval to continue to hold on to the licence. Otherwise, if the company has not commenced business within 6 months from the date of issue of the CMS licence, the company's CMS licence will lapse after the 6-month period.

[Updated in Oct 02]

Q13 Our company is licensed to conduct both trading in futures contracts and dealing in securities. We have started dealing in securities, but have yet to commence futures trading after 6 months. Will our licence lapse?

A13 The company has to keep MAS informed of its plan. The company's licence will lapse only in respect of trading in futures contracts, which it has yet to commence after 6 months. Its licence for dealing in securities will still be valid. However, the company has to return its CMS licence to MAS, and a new licence reflecting the remaining activity of dealing in securities will be issued to the company.

[Updated in Oct 02]

Q14 I hold a representative's licence for dealing in securities and trading in futures contracts. If I wish to transfer to another principal to conduct only dealing in securities, and not trading in futures contracts, what should I do?

A14 You should lodge Form 9 to notify MAS of your transfer to a new principal not later than 14 days after the date of your transfer, together with Form 8 to notify MAS of your cessation of trading in futures contracts.

[Updated in Oct 02]

Q15 I ceased to act as a holder of a representative's licence to deal in securities and have notified MAS of my cessation some months ago. Do I have to make a new application if I were to join another principal company to conduct the same regulated activity?

A15 It depends on the anniversary date and the expiry date of your licence. (For further details on the anniversary date, please refer to the Guidelines on Licence Application and Payment of Fees). You may fall within one of the following situations:

- If your licence has already expired, you will have to make a new application.
- If your licence has not expired, you can submit Form 9 to MAS if you join another principal before the next anniversary date.
- If you have ceased your licence before the anniversary date of your licence, but wish to conduct the same regulated activity after the anniversary date, you will have to make a new application as your licence has already lapsed. Please refer to Regulation 9(b)(iii) of the SFR on the lapsing of licence.

[Updated in Oct 02]

Q16 I am a licensed representative. Do I have to inform MAS if I have changed my residential address or other personal particulars?

A16 Yes. A licensed representative is required to lodge Form 16 with MAS in respect of any change in his particulars as specified in Form 16 not later than 14 days after the date of the change of the particulars.

[Updated in Oct 02]

Q17 I hold a representative's licence which was migrated from the repealed Securities Industry Act and Futures Trading Act. As I was not required to re-apply for a representative's licence under the SFA in Form 3, I did not inform MAS of the changes in my personal particulars as listed in Form 3. Am I now required to provide such information to MAS?

A17 Yes. As provided in Regulation 5 of the SFR, all representatives are required to furnish the most updated information as prescribed in Form 3 by submitting Form 16 by 14th July 2005 if they have not previously provided such information to MAS. [Updated in Jul 05]

Q18 My company intends to provide securities financing. Do we need to hold a licence under the SFA and the MoneyLenders Act ?

A18 Securities financing is a regulated activity under the SFA. Any company conducting securities financing would need to hold a CMS licence in respect of securities financing. If the company were granted the CMS licence, it would be exempted from the requirement to hold a Moneylender's licence. However, it will be required to obtain MAS' prior approval to conduct any other moneylending activities. [Updated in Jul 05]

Q19 Is the business of securities borrowing and lending subject to the licensing requirement under the SFA?

A19 Yes, a company that is engaged in the business of securities borrowing and lending is considered to be carrying on a business of dealing in securities. It is therefore required to hold a CMS licence for dealing in securities, unless otherwise exempted. Details of the exemptions from the requirement to hold a CMS licence for dealing in securities can be found in the Second Schedule to the SFR. [Updated in Oct 02]

Q20 My company has plans to manage a fund which will invest into assets such as private equity, property and infrastructural assets. Are we required to apply for a CMS license in fund management?

A20 Licensing requirements will apply to managers of funds where all of the following criteria are met:

- (a) The fund manager is an external (i.e. non-in house) manager;
- (b) The assets under management (whether in whole or in part) comprise a portfolio of securities and futures contracts (including scenarios where these investments are held through SPVs); and
- (c) The manager is in the business of fund management.

Managers of property funds which meet all the criteria of a real estate investment trust (REIT), being a collective investment scheme:

- (a) that is a trust;
- (b) that invests only in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and
- (c) all or any units of which are listed for quotation on a securities exchange,

will be treated as REIT managers and are required to obtain MAS' approval to manage the REIT.

MAS will review and/or revise the criteria listed above, as may be necessary. [Updated in Feb 08]

Q21 What does it mean to be 'in the business of fund management'?

A21 This means that the company's business involves making investment decisions regarding a pool of moneys or assets, on behalf of customers. This is in contrast to a company whose primary business involves the day-to-day operation and management of property or infrastructural assets. [Updated in Feb 08]

Q22 Are fund managers permitted to conduct the business of securities borrowing and lending in respect of its clients' portfolio?

A22 As provided in paragraph 2(b) of the Second Schedule to the SFR, a fund manager may conduct business in securities borrowing and lending, so long as such activity is solely incidental to its fund management business.

[Updated in Jul 05]

Q23 My company holds a CMS licence for fund management. Do we have to apply for a representative's licence for those employees who are engaged in client servicing, business development and marketing?

A23 Generally, employees of a fund management company who carry out activities which are necessary for or directly connected with fund management and which form an integral part of fund management, as defined under the Second Schedule to the SFA, are required to hold representative's licences. Where the activities comprise financial advisory services, the company would be regarded as an exempt financial adviser under the FAA in respect of such services, and the employees who provide such services would be regarded as representatives of an exempt financial adviser. For such services, the company and its representatives are required to comply with all relevant provisions in the FAA, including any regulations, notices or guidelines as may be issued under the FAA.

[Updated in Oct 02]

Q24 My company has some dealers who carry out central dealing functions for the funds under management. Do they need to be licensed?

A24 Representatives of a fund management company who perform central dealing functions for the funds managed by the fund management company, to the extent that they relate to pure execution of orders only, are not required to be licensed. However, where the fund management company also carries out central dealing functions for related fund management companies within the group, the first-mentioned fund management company would be deemed to be carrying on a business of dealing in securities and it would have to add the regulated activity to its CMS licence. The same requirement would apply to the representatives.

[Updated in Oct 02]

Q25 As part of our fund management activities, our research analysts write research reports, which are used by our fund managers in the company. The research analysts also take part in the discussion with the fund managers on the investments to be made in respect of the

funds managed. Do these research analysts need to hold representative's licences for the regulated activity of fund management under the SFA?

A25 Yes, the company's research analysts are required to hold representative's licences for the regulated activity of fund management so long as they contribute directly to the investment decisions to be made on the funds managed, or participate directly in the decision making process concerning the investments to be made for the funds. Such activities are considered to be directly connected with fund management, and are viewed as an integral part of the fund management conducted by the company.

[Updated in Oct 02]

Q26 Some of our research analysts write reports on economic performance, and future trends of the economy, and provide general views on investments. These reports are used by our fund managers as background information. Do they have to hold representative's licences for the regulated activity of fund management under the SFA?

A26 No, MAS do not require these research analysts to hold representative's licences for the regulated activity of fund management if they produce research reports only for the purpose of providing general background information to the fund managers, and do not directly contribute or participate in the investment decision or any part of the fund management process. For employees who do not hold representative's licences, the company should ensure that they do not directly contribute or participate in any investment decision or fund management process. There may not be clear-cut distinctions between the role of analysts in providing general background information, and contributing or participating in fund management decisions, or analysts may move between or combine these roles. If in doubt, these employees should apply for representative's licences.

[Updated in Oct 02]

Q27 A registered trust company, in conducting activities under the Trust Companies Act, may undertake the role of a trustee, agent or custodian and may have trust or fiduciary duties to its customers. Is the registered trust company required to obtain a CMS licence when it provides custodial services for securities that is solely incidental to its carrying on of the business for which it is registered under the Trust Companies Act?

A27 It is not MAS' policy intent to regulate under the SFA trust companies, which are registered under the Trust Companies Act and are conducting regulated activities, such as providing custodial services for securities, that are solely incidental to the business for which they are registered under the Trust Companies Act. Such activities would not require an additional CMS licence under the SFA for the carrying on of business in the regulated activity. [Updated in Nov 03]

B) EXEMPTIONS

Q28 Would fund managers who wish to distribute their own funds, third party funds or foreign funds, be required to go through a holder of a CMS licence for dealing in securities or be licensed themselves to deal in securities¹? Would the requirements be the same if the fund managers are also Exempt Financial Advisers under Section 23 of the FAA?

A28 Under section 82 of the SFA, all persons who carry on a business in the regulated activity of dealing in securities are required to hold a CMS licence for that regulated activity, unless otherwise exempted.

Specifically, under paragraph 2(k) of the Second Schedule to the SFR, a responsible person for a collective investment scheme that is authorised or recognised under section 286 or 287 of the SFA respectively; or where the units of the scheme is exempted under Subdivision (4) of Division 2 of Part XIII of the SFA, is not required to hold a CMS licence for the regulated activity of dealing in securities, —

- (1) in respect of his dealing in securities in relation to the units of that scheme or the underlying securities that comprise the investment of funds under that scheme, provided that such responsible person is also the holder of a CMS licence, or an exempt person, in respect of fund management; or

¹ The definition of securities in section 2 of the SFA includes, amongst others, any unit in a collective investment scheme

(2) in respect of his dealing in securities in relation to the units of that scheme, provided that the dealing is effected through any of the following persons:

- (a) a holder of a CMS licence to deal in securities;
- (b) an exempt person in respect of dealing in securities that are units of any collective investment scheme;
- (c) a financial adviser licensed under the FAA to market collective investment schemes; or
- (d) an exempt financial adviser as defined in the FAA in respect of marketing of collective investment schemes.

[Updated in Jul 05]

Q29 Would fund managers who wish to distribute their own funds, third party or foreign funds, be required to hold CMS licences to provide custodial services for securities?

A29 All persons who carry on business in the regulated activity of providing custodial services for securities, as defined in Part II of the Second Schedule to the SFA, are required to hold a CMS licence for that regulated activity, unless they fall within the exemptions given. Such exemptions include those provided under paragraph 6 of the Second Schedule to the SFR.

[Updated in May 03]

C) CUSTOMERS' MONEYS AND ASSETS

Q30 Are there similar trust account requirements in the SFA, to those stipulated in the repealed Securities Industry Act and Futures Trading Act?

A30 Yes, a CMS licence holder is required to deposit customers' moneys and assets into a trust account maintained with a bank, merchant bank or finance company in Singapore. For customers' assets, the holder may also deposit the assets in a trust account maintained with the following institutions:

- a depository agent, only in relation to securities deposited into the CDP system;
- an approved trustee for a collective investment scheme in respect of assets under the collective investment scheme; or

- a company holding a CMS licence to provide custodial services for securities. [Updated in Oct 02]

Q31 What is meant by a trust account?

A31 A trust account is an account that is maintained with the above institutions or other institutions as allowed under the SFA, and is held on trust for the customers. The account must be designated as a trust account or customer's or customers' account which must be distinguished and maintained separately from other accounts that contain moneys or assets belonging to the CMS licence holder. [Updated in Oct 02]

Q32 Can a CMS licence holder maintain a trust account with an overseas institution?

A32 Yes, but only in respect of customers' moneys and assets denominated in non-S\$. In addition, the following conditions must be met:

- the institution is licensed, registered or authorized to conduct banking business or, in the case of customers' assets, to act as a custodian in the country where the account is maintained; and
- the CMS licence holder has obtained customer's prior consent.

[Updated in Oct 02]

Q33 What is the time frame for CMS licence holders to deposit customers' moneys and assets into a trust account?

A33 CMS licence holders are required to deposit customers' moneys and assets into a trust account by the next business day upon receipt of the moneys/assets or upon notification of the receipt of moneys/assets, whichever is later.

The term "next business day" refers to the next business day of the CMS licence holder. However, if the next business day falls on a day when the institution, with which the trust account is maintained, is not opened for business and the CMS licence holder is unable to deposit customers' moneys or assets into the trust account, the CMS licence holder could deposit the moneys and assets on the next business day of the institution.

[Updated in Oct 02]

Q34 Are there any specific requirements which a CMS licence holder must observe when it opens a trust account with an institution?

A34 Yes, the CMS licence holder must obtain a written acknowledgement from the institution, as specified in Regulations 17(1) and 27(1) of the SFR, that:

- All moneys and assets deposited are held on trust by the CMS licence holder for its customers; and
- The account is designated as a trust account or customers' account.

In addition, before the CMS licence holder opens a custody account with a custodian, it must conduct due diligence, and be satisfied that the institution is suitable for its customers. It must also maintain records of the grounds on which it has considered the institution to be suitable.

The CMS licence holder that deposits customers' assets with a custodian must also enter into a custody agreement with the institution. Details of the terms and conditions that should be included in the agreement are set out in Regulation 32 of the SFR. [Updated in Oct 02]

Q35 Can a CMS licence holder keep the interest income or any other entitlements arising from the moneys or assets held in the trust account?

A35 No, any interest income or other entitlements derived from moneys or assets held in the trust account must be returned to the customers, unless the customers agreed otherwise. However, the CMS licence holder may impose a service charge against the interest earned to cover any cost incurred, so long as the fee imposed is reasonable and the CMS licence holder has disclosed the fee to the customers. [Updated in Oct 02]

Q36 Regulation 23 of the SFR allows a CMS licence holder to place its own money into the trust account to prevent the trust account from being under-margined or under-funded and to ensure the continued maintenance of the trust account. Can the CMS licence holder subsequently withdraw such money and any interest earned on the money from the trust account?

A36 Yes, so long as the withdrawal of the money and interest income would not result in the trust account becoming under-margined or under-funded.

[Updated in Oct 02]

Q37 My company holds a CMS licence and in the course of our business, we hold customers' securities in a trust account. Can we lend out customers' securities or arrange for a custodian to lend out customers' securities?

A37 Yes, but the company must explain the risk involved to the customers (unless the customers are accredited investors), and obtain the customers' written consent. It must also enter into an agreement with the customers, setting out the terms and conditions for the lending of the securities.

In addition, in respect of any securities lent, the company must obtain from the borrower collateral which must have a value of more than 100% of the market value of the securities lent, unless the customer is an accredited investor and the securities are lent to persons who are accredited investors.

Where the company makes arrangement for a custodian to lend out their customers' securities, it must enter into an agreement with the custodian, and disclose the terms and conditions to the customers.

[Updated in Oct 02]

Q38 Can a CMS licence holder open omnibus accounts with another financial institution ("third party FI") in which both the CMS licence holder's and its clients' moneys or assets are deposited? Or should separate sub-accounts for the CMS licence holder and its clients be maintained by both the CMS licence holder and the third party FI?

A38 CMS licence holders are required to keep separate sub-accounts for its clients' moneys or assets if they are acting as the clients' custodians. Where they place these moneys or assets with foreign financial institutions, they should also ensure that separate sub-accounts be maintained by the foreign financial institution where possible.

[Updated in Feb 03]

Q39 Regulation 18 of the SFR requires a company to obtain an acknowledgement from the financial institutions that the moneys held on trust cannot be offset against any debt owned by the company to the

financial institution. Can the company be considered to have satisfied this requirement if it issues a letter to the effect of the acknowledgement requirement instead of imposing the acknowledgment requirement prior to the deposit of the moneys?

A39 Moneys/assets held on trust for customers are assets belonging to the customers which should be protected from being off-set against any debt owed by the company to the financial institution. Hence, the company should ensure that the acknowledgement from the financial institutions is received at the time of opening of the trust account with the financial institution and prior to the deposit of any moneys/assets into the accounts.

[Updated in Feb 03]

Q40 Do the requirements under Regulation 37 of the SFR on daily computation for trust and custody accounts apply only to moneys or assets held for futures trading and leveraged foreign exchange trading and not for other purposes?

A41 Yes. The requirements under Regulation 37 apply only to moneys or assets held for futures trading and leveraged foreign exchange trading and not for other purposes.

[Updated in Feb 03]

Q42 What is the difference between Regulation 31 and Regulation 32 of the SFR? When are they applicable?

A42 Regulation 31 of the SFR applies when a CMS licence holder provides custodial services to its customers. The licence holder providing the custodial services is required to comply with Regulation 31 of the SFR and notify customers of the terms and conditions in respect of the custodial services. Regulation 32 of the SFR does not apply between the CMS licence holder and the customers in such situations.

Regulation 32 of the SFR applies when, instead of providing custodial services directly to its customers, a CMS licence holder assists its customers to deposit their assets with another custodian. The CMS licence holder will have to enter into a custody agreement with the custodian in accordance with Regulation 32 of the SFR and inform its customers of the terms and conditions. Since the CMS licence holder does not provide custodial services to its customers directly in such situations, Regulation 31

of the SFR does not apply between the CMS licence holder and its customer. [Updated in Dec 03]

Q43 My company is a CMS licence holder providing custodial services to our customers. We have complied with the requirements in Regulation 31 of the SFR and have notified our customers of the terms and conditions that would apply to the custody of their assets. If we further place our customers' assets with a sub-custodian, are we required to enter into a custody agreement with the sub-custodian in accordance with Regulation 32 of the SFR?

A43 If a CMS licence holder provides custodial services to its customers and has entered into a customer agreement with the customers in accordance with Regulation 31, then Regulation 32 will not apply between the CMS licence holder and any sub-custodian that the CMS licence holder may further place its customers' assets with. [Updated in Dec 03]

Q44 Regulation 29 of the SFR requires a CMS licence holder to review the suitability of its sub-custodians. How often should the CMS licence holder perform this suitability review?

A44 CMS licence holders which provide custodial services should conduct due diligence on the suitability of the sub-custodians before opening custody accounts with their sub-custodians. To properly discharge their fiduciary duties to their customers, CMS licence holders should also perform periodic reviews of these sub-custodians at least once a year and maintain appropriate records of these reviews. [Updated in Dec 06]

Q45 To comply with Regulation 31 of the SFR on customer agreement, a CMS licence holder providing custodial services is required to notify its customers of the terms and conditions that apply to the safe custody of the customer's assets, including applicable fees and costs for the custody of assets. Would verbal notification of the applicable fees suffice?

A45 As a matter of good practice, CMS licence holders should provide written notifications on applicable fees and charges, for example, CMS licence holders could provide their customers with an information sheet on applicable fees. [Updated in Dec 06]

D) BUSINESS CONDUCT RULES

Q46 With regard to the requirements on the keeping of books and records, can such records be kept electronically?

A46 The word “record” is defined in section 2 of SFA to mean information that is inscribed, stored or otherwise fixed on tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. Accordingly, such records may be kept electronically. [Updated in Dec 03]

Q47 For how long should we keep the books and records?

A47 Licensees are required to maintain their books and records for at least 6 years. [Updated in Oct 02]

Q48 With regard to the requirements on the keeping of books and records, are CMS licence holders required to keep all Bloomberg messages or email communications if there are other forms of records, which would record the relevant transaction, arrangement or agreement?

A48 In complying with the record keeping requirements under Regulation 39 of the SFR, the company may decide on the mode of documentation, which the company deems fit or practicable. Duplicate copies of the same information need not be retained. [Updated in Feb 03]

Q49 Regulation 39(3) of the SFR requires CMS licence holders to keep a written record of customers’ orders. What basis should be used in determining the time of execution of the order if the order is transmitted to another person, such as an overseas broker, for execution?

A49 Where an order is transmitted to another person for execution, the time of execution of the order should be based on the time of notification given by that person that the order has been executed. [Updated in Oct 02]

Q50 Regulation 39(3) of the SFR requires CMS licence holders to keep record of customers’ orders “as soon as practicable”. What is the interpretation of the phrase “as soon as practicable” in relation to orders that are received off the business premises?

A50 Written records should be prepared immediately upon receipt, transmission, amendment, cancellation or execution of customer orders, subject to any practice constraints. Where an order cannot be recorded immediately, the company should put in place proper procedures to ensure that reasonable steps are taken to record such orders promptly. [Updated in Dec 03]

Q51 Does the requirement to record time of customers' orders in Regulation 39(3) of the SFR apply to placement of new securities pursuant to IPOs?

A51 No. [Updated in Dec 03]

Q52 Can companies which execute their proprietary trades and clients' trades under two different and separate business divisions be exempted from Section 122 of the SFA which requires priority be given to customers' orders?

A52 Section 122(1) of the Act shall not apply to a transaction entered into by the companies if the transaction is entered into in accordance to the business rules or practices of the securities exchange or futures exchange. Companies should refer to the SGX Rule 13.4 and Practice Note 13.4.1 on customer order priority. Companies should institute adequate controls to ensure compliance with the requirement on the priority of customers' orders. Companies may decide on the business structure that would meet this requirement in the most effective manner. [Updated in Jul 05]

Q53 Regulation 40 of the SFR requires CMS licence holders to send monthly and/or quarterly statement of accounts to their customers. Can CMS licence holders send these statements to their customers electronically?

A53 Yes, CMS licence holders can send these statements to their customers via electronic means. However, asking a customer to retrieve his own statement via an url link would not be considered to be sending the statement via electronic means, and therefore would not be regarded to be in compliance with Regulation 40. [Updated in Jul 05]

Q54 Regulation 40(1A)(b)(i) of the SFR exempts CMS licence holders from sending monthly and quarterly statements of accounts to customers who are accredited investors or their related corporations if the licence

holders have made the prescribed particulars available to them on a real-time basis in the form of electronic records stored in an electronic facility. What does “real-time basis in the form of electronic records stored in an electronic facility” mean?

A54 This means that CMS licence holders are exempted from sending monthly and quarterly statements to customers who are accredited investors or their related corporations, if an electronic facility has been made available to these customers and these customers are able to have access to real-time information on this electronic facility at any time. [Updated in Dec 03]

Q55 Other than the exemption described in Q9, is there any other exemption given to CMS licence holders from the requirement to send monthly and/or quarterly statement of accounts to customers?

A55 On the monthly statements, CMS licence holders are not required to send monthly statements to customers if there is no change to the particulars (as specified in Regulation 40(2) of the SFR) since the date the last statement was made up to. This means that as long as there is a change to the particulars, the CMS licence holders will have to send the monthly statements, unless they fall within the exemption described in Q9.

On the quarterly statements, CMS licence holders need to send quarterly statements to customers as long as there are assets, futures or leverage foreign exchange trading positions or cash balances in the customers' accounts at the end of the quarter, regardless of whether there has been any change in these particulars, unless they fall within the exemption described in Q9, or the particulars are already reflected in the monthly statement for the last month of that quarter. In other words, if there is no balance in the customers' accounts, CMS licence holders will not need to send a quarterly statement because the change in the particulars in the customers' accounts from some balance to nil balance would have been reflected in the monthly statement.

Where monthly statements are not sent to customers for the last month of the quarter because there has been no change in particulars, CMS licence holders will still need to send quarterly statements if there are some balances in the customers' accounts as at the end of the quarter. In other words, CMS licence holders will not need to send a quarterly statement only if there is no balance in the customers' accounts. [Updated in Dec 03]

Q56 If a CMS licence holder engages in both dealing in securities and fund management, do contract notes need to be issued for transactions entered into by the CMS licence holder in its capacity as a fund manager?

A56 Section 118 of the SFA only relates to dealing in securities, trading in futures contracts and leveraged foreign exchange trading. Thus, there is no requirement for CMS licence holder to issue any contract notes in relation to its fund management activities. [Updated in Feb 03]

Q57 Section 118 of the SFA requires a CMS licence holder to issue contract notes to the other party to the transaction involving the sale or purchase of securities or futures contracts or a transaction connected with leveraged foreign exchange trading. Who is “the other party to the transaction” referring to? Is it the counter-party or the customer?

A57 “The other party” refers to either the counterparty or the customer depending on the context of each transaction. For example, where a company trades with a customer as an agent or a principal in local or foreign stocks, a contract note should be issued to the customer in respect of the transaction. [Updated in Feb 03]

Q58 Regulation 43 of the SFR allows CMS licence holders to grant unsecured credit to their officers and employees. Does this prohibition apply to the borrowing of securities by such persons from the CMS licence holders?

A58 Yes. Regulation 43 applies to a CMS licence holder that lends securities to its relevant persons. Relevant person means officers and employees of the holder, other than a director who is not its employee. Any unsecured advance, unsecured loan or unsecured credit facility granted to the following accounts shall be deemed to be an unsecured advance, unsecured loan or unsecured credit facility granted by the holder to that relevant person:

- a) the account of a relevant person of the holder;
- b) an account in which a relevant person of the holder has an interest;
- c) an account of any person who acts jointly with, under the control of, or in accordance with, the direction of a relevant person of the holder; or

- d) an account of any connected person of a relevant person of the holder, where the connected person is not himself a relevant person of the holder. [Updated in Jul 05]

Q59 Is there a definition of “advance, credit facility or loan” provided in the SFA/SFR ?

A59 You can rely on the ordinary meaning for the above terms; they are not defined in the SFA/SFR. Generally, an advance, credit facility or loan would have been considered to be granted by a CMS licence holder if its customer does not pay the CMS licence holder the amount due of the security on the settlement date. [Updated in Dec 06]

Q60 An employee who is also a customer of a CMS licence holder buys or sells shares through the CMS licence holder (his employer).

Q60a In the situation where the employee of a CMS licence holder buys a share through the company and the market price of the share moves against the customer (i.e. employee) after execution by the company and before the settlement date for the trade. If there are marked-to-market losses arising from these outstanding trades in an employee’s securities account with a CMS licence holder, would this be considered an advance, credit facility or loan?

A60a When the employee buys a share on day T, he is given until the settlement date, say T+3 for SGX-traded securities, to pay up the amount due agreed to on T. So long as the employee pays the CMS licence holder the amount due on or before the settlement date, despite the fact that the market may have moved against the employee, and that there were marked-to market losses for the period from T to settlement date, there is no loan, advance or credit facility granted by the CMS licence holder for the period from T to settlement date. [Updated in Dec 06]

Q60b In the situation where the employee buys a share on T (first trade) value at \$100 and sells the same share on T+1 (second trade) at \$80 before the settlement date, when is the CMS licence holder considered to have granted advance, loan or credit facility to the employee?

A60b In the above scenario, if the employee has not paid up the difference of \$20 by settlement date (T+3), the CMS licence holder would be considered to

have granted an unsecured credit to the employee on T+4.

[Updated in Dec 06]

Q60c If the employee buys a share but does not pay up by settlement date, when is the CMS licensee considered to have granted advance, loan or credit facility to the employee?

A60c The CMS licence holder would be deemed to have granted unsecured credit to the employee on the day after settlement is due (for example, T+4). If the CMS licence holder force-sells the share purchased after settlement date and if the proceeds from the forced sale are sufficient to cover the gross purchase price (including commission etc), the CMS licence holder would not be considered to have granted unsecured advance, loan or credit facility. However, if the proceeds from the forced sale are insufficient to cover the customer's loss entirely, the CMS licence holder would be considered to have granted an unsecured advance, loan or credit facility to the customer for the remaining outstanding loss.

[Updated in Dec 06]

Q60d What happens if before the trade, the CMS licence holder agrees that the customer need not pay the amount that he owes on the usual settlement dates required by the exchange rules but can make payment at later date, would this be regarded as an advance, loan or credit facility?

A60d Yes. CMS licence holder would still be considered to have granted an advance, loan or credit facility, effective from the settlement date mandated by the rules of the exchange.

[Updated in Dec 06]

Q61 Why are the requirements in section 121 and parts of section 120 of the SFA has been repealed in the SFA(Amendment) 2005?

A61 The provisions which have been repealed and re-enacted relate to making recommendations which are governed under the FAA. As such, there is no need to duplicate these requirements in SFA. CMS licence holders who are providing recommendations to clients would be deemed to be conducting regulated activities under the FAA and therefore would be required to lodge a notice of commencement of business as an exempt financial adviser. Exempt financial advisers are expected to comply with the relevant provisions in FAA.

[Updated in Jul 05]

Q62 Does Regulation 47(1) of the SFR, which prohibits withholding or withdrawing of customer orders from the market, prohibit the pooling of customers' orders as well?

A62 Regulation 47 does not prohibit a CMS licence holder from pooling its customers' orders that it received at the same time. However, the CMS licence holder should not intentionally withhold customers' orders so as to pool them together. [Updated in Feb 03]

E) APPLICATION OF SFA AND SFR TO BANKS, MERCHANT BANKS AND OTHER FINANCIAL INSTITUTIONS

Q63 Are there any requirements under the SFA or SFR that apply to a bank or other financial institutions?

A63 Yes, banks, merchant banks and finance companies that conduct any regulated activity are required to comply with certain business conduct rules in relation to that regulated activity. The rules are specified in Regulation 54 of the SFR.

Insurance companies are exempted from the requirement to hold a CMS licence for providing custodial services in respect of units in a collective investment scheme. However, they have to comply with the trust account requirements in relation to the units in a collective investment scheme, which they hold on trust for their customers. [Updated in Oct 02]

Q64 Regulation 16 of the SFR requires that customers' money be deposited into a trust account, and such money includes money received in respect of leveraged foreign exchange trading or received in the course of the company's business (Regulation 15). Must banks and merchant banks comply with this requirement in relation to money received in the ordinary course of their banking and merchant banking business, including those arising from foreign exchange trading and leveraged foreign exchange trading?

A64 The trust account requirements apply only to money received in relation to the regulated activities conducted by the banks and merchant banks. The requirements do not apply to money arising from the ordinary course of the

banking and merchant banking business of the banks and merchant banks. For example, some banks received money from customers but the customers have yet to give instruction as to the application of the money. Since such money is not meant for any regulated activity, it will not be subject to the trust account requirements.

For banks and merchant banks, the trust account requirements also do not apply to money arising from foreign exchange trading and leveraged foreign exchange trading. Foreign exchange trading (except for foreign exchange trading for the purpose of fund management) is not a regulated activity under the SFA, and is therefore not subject to the trust account requirements. As for leveraged foreign exchange trading, the definition of such trading does not include contracts arranged by a bank or merchant bank in Singapore. Money relating to such contracts is therefore not subject to the trust account requirements. [Updated in Oct 02]

Q65 As banks and merchant banks are subject to the trust account requirements in respect of the regulated activities they conduct, must they convert all the deposit accounts of the customers into trust accounts if they conduct regulated activities for such customers?

A65 No. These accounts are already held in the name of the customers. They need not be designated as trust accounts. They are no different from any other saving or deposit accounts maintained by a customer with the banks or merchant banks. [Updated in Oct 02]

Q66 For the purpose of keeping customers' orders confidential as required under Regulation 47(2) of the SFR, can banks which have banking secrecy obligations under the Banking Act rely on the exceptions to the banking secrecy obligations set out in Sixth schedule to the Banking Act or Third schedule to the Banking Regulations respectively?

A66 Yes. Regulation 54(3) of the SFR states that to the extent the requirements in the Banking Act conflict with Regulation 47, the Banking Act will prevail. Thus, banks may rely on the exceptions set out in Third schedule to the Banking Act or Third schedule to the Banking Regulations respectively on confidentiality obligations. [Updated in Jul 05]

Q67 Can bank, merchant banks or finance companies hold customers' moneys or assets with itself in an account designated as "trust" or

“customer” account, instead of having to open a trust account with another bank to satisfy Regulations 17(1) and 29(1) of the SFR?

A67 Yes. Banks, merchant banks and finance companies are specified institutions or custodians, and thus they are allowed to hold customers’ moneys or assets with themselves so long as these moneys or assets are deposited into an account designated as “trust” or “customer” and are segregated from their own proprietary moneys or assets.

[Updated in Feb 03]

F) OTHERS

Q68 The definition of “bonds” includes notes, bonds and Treasury Bills, as well as options in respect of these instruments. Does this definition include convertible bonds?

A68 Yes.

[Updated in Oct 02]

Q69 Would MAS publish a list of the recognised market operator for purpose of complying with the SFA such as section 120?

A69 MAS would give notice in the Gazette of any recognised trading system provider that has been recognised under section 8(10) of SFA. The list of recognized trading system providers is published on MAS website.

[Updated in Jul 05]

Q70 Does the definition of “bonds” include structured instruments and instruments with hybrid features, which are debt instruments issued as bonds?

A70 For structured instruments or instruments with hybrid features, it would be necessary to consider the particular features and characteristics of the product in order to determine whether it falls within the definition of “bonds”.

[Updated in Feb 03]

Q71 Form 2 (Application of renewal of a CMS Licence) requires CMS licence holders to disclose information on substantial shareholders and related corporations. To what extent should such information be provided to MAS?

A71 CMS licence holders are required to disclose information on its immediate parent company and its subsidiaries. For other entities within the group, CMS licence holders are expected to disclose information to the best of their knowledge. [Updated in Dec 03]

Disclaimer: The FAQs are meant to provide guidance to the industry on MAS' policy and administration of the Securities and Futures Act and regulations. They do not constitute legal advice. MAS expects industry participants to retain their independent legal counsel to advise them on how their business operations should be conducted in order to satisfy the legal/regulatory requirements and to advise them on all applicable laws, rules or regulations of Singapore.