



Monetary Authority of Singapore

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

FREQUENTLY ASKED QUESTIONS

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 of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations [“SFR”], 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 Oct 02]

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

A8 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]

Q9 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?

A9 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]

Q10 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?

A10 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]

Q11 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?

A11 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]

Q12 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?

A12 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]

Q13 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?

A13 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]

Q14 I am a licensed representative. Do I have to inform MAS if I have changed my residential address or other personal particulars?

A14 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]

Q15 We are a company that provides securities financing. We currently hold a Moneylender's licence issued by the Registrar of Moneylenders. How would the SFA affect us?

A15 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 Oct 02]

Q16 Is the business of securities borrowing and lending subject to the licensing requirement under the SFA?

A16 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]

Q17 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?

A17 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]

Q18 My company has some dealers who carry out central dealing functions for the funds under management. Do they need to be licensed?

A18 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]

Q19 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?

A19 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]

Q20 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?

A20 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]

Q21 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?

A21 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]

Q22 Would a custodian providing custodial services for securities be required to hold a CMS licence for securities financing if the business also extend credit to its clients to facilitate the purchase of securities or for the purpose of settlement of purchase transactions?

A22 Yes, Part II Interpretation under the Second Schedule to the SFA, defines the meaning of "securities financing" to mean "directly or indirectly facilitate, by providing any credit facility, advance or loan for (a) subscription of securities or purchase of listed or to be listed on a securities market or such other securities as the Authority may prescribed; and (b) where applicable, the continued holding of those securities, ...". The extension of such credit facilities by a custodian may be seen as indirectly

facilitate the purchase of securities by giving the consideration for the securities. [Updated in Apr 04]

B) EXEMPTIONS

Q1 Who are exempted from holding a CMS licence?

A1 The following financial institutions are exempted from the requirement to hold a CMS licence in respect of the specified regulated activity:

- (a) Banks licensed under the Banking Act (Cap.19) in respect of any regulated activity;
- (b) Merchant banks approved as financial institutions under the Monetary Authority of Singapore Act (Cap.186) in respect of regulated activities which they are permitted to conduct under the Act;
- (c) Finance companies licensed under the Finance Companies Act (Cap.108) in respect of the regulated activities which they are permitted to conduct under the Finance Companies Act; and
- (d) Insurance companies registered under the Insurance Act (Cap.142) in respect of the following regulated activities:
 - i. Fund management for the purpose of carrying out insurance business;
 - ii. Providing custodial services in respect of units of collective investment schemes.

Other than the above institutions, those who meet certain conditions are also given licensing exemption in respect of certain regulated activities. Details of such licensing exemption can be found in Section 99 and the Third Schedule to the SFA, as well as the Second Schedule to the SFR.

[Updated in Oct 02]

Q2 Who are exempted from holding a representative's licence?

A2 The following individuals are exempted from holding a representative's licence:

- (a) Those acting on behalf of exempt persons, i.e. persons exempted from the requirement to hold a CMS licence;
- (b) Those acting on behalf of CMS licence holders, which provide securities financing or custodial services for securities.
- (c) An employee of a bank or merchant bank who is registered as an associated person of the Singapore Exchange Derivatives Trading Ltd. [Updated in Oct 02]

Q3 Our company manages funds for not more than 30 accredited investors and is exempted under paragraph 5 of the Second Schedule to the SFR. What are the conditions and restrictions imposed on our company, and is the company subject to any reporting requirements?

A3 The company shall ensure that its fund management business is confined to not more than 30 qualified investors. If it also acts as an exempt financial adviser to not more than 30 accredited investors under the FAA, it shall ensure that the total number of qualified investors and accredited investors does not exceed 30.

In addition, the company is required to submit the following to MAS:

- (a) a notice of commencement of business in Form 22 of the Second Schedule to the SFR, not later than 14 days after the commencement of its business in fund management;
- (b) a notice of change of particulars in Form 23 of the Second Schedule to the SFR, where there is a change in the particulars which are required to be notified in Form 22, not later than 14 days after the date of the change;
- (c) a notice of cessation of business in Form 24 of the Second Schedule to the SFR, not later than 14 days after the cessation of its business in fund management; and

- (d) an annual declaration in Form 25 of the Second Schedule to the SFR, within 14 days after the end of each financial year of the company.
[Updated in Oct 02]

Q4 What is the definition of a qualified investor?

- A4 A “qualified investor” as defined in paragraph (5)(3) of the Second Schedule to the SFR means:
- (a) an accredited investor, other than one who is a participant in a collective investment scheme referred to in paragraph (b) or (c) below;
 - (b) a collective investment scheme which is offered only to accredited investors when it is offered in Singapore;
 - (c) any other collective investment scheme which is not offered in Singapore.
[Updated in Oct 02]

Q5 When would a person cease to be exempted from holding a CMS licence for conducting fund management for not more than 30 qualified investors under paragraph 5 of the Second Schedule to the SFR?

- A5 A person would cease to be exempted if it falls within the circumstances prescribed in paragraph 5(2), (4) and (5) of the Second Schedule to the SFR. This includes the following:
- (a) provision of fund management services to non-qualified investors or to more than 30 qualified investors
 - (b) where the person is an individual and;
 - i. he becomes a representative or employee of the holder of a CMS licence for fund management;
 - ii. he becomes an undischarged bankrupt whether in Singapore or elsewhere; or
 - iii. he has been convicted of a relevant offence.
 - (c) where the person is a corporation and;
 - i. the corporation or its substantial shareholder is in the course of being wound up or dissolved;

- ii. there is execution against the corporation or its shareholder in respect of a judgment debt which has been returned unsatisfied in whole or in part;
- iii. a receiver, a receiver and manager, a judicial manager or such other person has been appointed in relation to, or in respect of any property of the corporation or its substantial shareholder;
- iv. the corporation or its substantial shareholder has entered into a compromise or scheme of arrangement with its creditors; or
- v. the corporation or its substantial shareholder has been convicted of a relevant offence.

Relevant offence means an offence:

- (a) in connection with the promotion, formation, or management of a corporation or involving fraud or dishonesty, or the conviction for which involved a finding that he acted fraudulently or dishonestly;
- (b) under the Companies Act involving lack of diligence in the discharge of the duties of a director of a company;
- (c) under the SFA or any regulations under the SFA; or
- (d) under the Banking Act, the Commodity Trading Act, the Finance Companies Act, the Insurance Act, the Monetary Authority of Singapore Act, the Money-changing and Remittance Businesses Act, the Penal Code, the Financial Advisers Act 2001, or any regulations made under any of these Acts. [Updated in Oct 02]

Q6 Our company provides corporate finance advisory services to accredited investors and is exempted under paragraph 7 of the Second Schedule to the SFR. What are the conditions and restrictions imposed on our company, and is the company subject to any reporting requirements?

- A6 The company shall ensure that its business of corporate finance advisory is confined to accredited investors. The advice shall not be specifically given for the making of any offer of securities to the public by the accredited investor to whom the advice was given. If the accredited investor is:
- (a) a public company;
 - (b) listed on a securities exchange; or
 - (c) a subsidiary of a corporation listed on a securities exchange;

the advice shall not be circulated to the shareholders of the public company or listed corporation (other than the shareholders who are accredited investors) and such advice should not be made known to the public.

In addition, the company is required to submit the following to MAS:

- (a) a notice of commencement of business in Form 22 of the Second Schedule to the SFR, not later than 14 days after the commencement of its business in corporate finance advisory;
- (b) a notice of change of particulars in Form 23 of the Second Schedule to the SFR, where there is a change in the particulars which are required to be notified in Form 22, not later than 14 days after the date of the change;
- (c) a notice of cessation of business in Form 24 of the Second Schedule to the SFR, not later than 14 days after the cessation of its business in corporate finance advisory; and
- (d) an annual declaration in Form 25 of the Second Schedule to the SFR, within 14 days after the end of each financial year of the company.

[Updated in Oct 02]

Q7 When would a person cease to be exempted from holding a CMS licence for providing corporate finance advice to accredited investors under paragraph 7 of the Second Schedule to the SFR?

A7 A person would cease to be exempted if its falls within the circumstances prescribed in paragraph 7(2), (3) and (4) of the Second Schedule to the SFR. This includes the following:

- (a) provision of advice to non-accredited investors
- (b) where the person is an individual and;
 - i. he becomes a representative or employee of the holder of a CMS licence for advising on corporate finance;
 - ii. he becomes an undischarged bankrupt whether in Singapore or elsewhere; or
 - iii. he has been convicted of a relevant offence.
- (c) where the person is a corporation and;

- i. the corporation or its substantial shareholder is in the course of being wound up or dissolved;
- ii. there is execution against the corporation or its shareholder in respect of a judgment debt which has been returned unsatisfied in whole or in part;
- iii. a receiver, a receiver and manager, a judicial manager or such other person has been appointed in relation to, or in respect of any property of the corporation or its substantial shareholder;
- iv. the corporation or its substantial shareholder has entered into a compromise or scheme of arrangement with its creditors; or
- v. the corporation or its substantial shareholder has been convicted of a relevant offence.

Please refer to Section B Q5 on the meaning of relevant offence.

[Updated in Oct 02]

Q8 Our company carries out leveraged foreign exchange trading with accredited investors and is exempted under paragraph 4 of the Second Schedule to the SFR. What are the conditions and restrictions imposed on our company, and is the company subject to any reporting requirements?

A8 The company shall ensure that its business of leveraged foreign exchange trading is confined to accredited investors.

In addition, the company is required to submit the following to MAS:

- (a) a notice of commencement of business in Form 18 of the Second Schedule to the SFR, not later than 14 days after the commencement of its business in leveraged foreign exchange trading;
- (b) a notice of change of particulars in Form 19 of the Second Schedule to the SFR, where there is a change in the particulars which are required to be notified in Form 18, not later than 14 days after the date of the change;
- (c) a notice of cessation of business in Form 20 of the Second Schedule to the SFR, not later than 14 days after the cessation of its business in leveraged foreign exchange trading; and
- (d) an annual declaration in Form 21 of the Second Schedule to the SFR, within 14 days after the end of each financial year of the company.

[Updated in Oct 02]

Q9 When would a person cease to be exempted from holding a CMS licence for conducting leveraged foreign exchange trading with accredited investors under paragraph 4 of the Second Schedule to the SFR?

A9 A person would cease to be exempted if its falls within the circumstances prescribed in paragraph 4(2), (3) and (4) of the Second Schedule to the SFR. This includes the following:

- (a) provision of advice to non-accredited investors
- (b) where the person is an individual and;
 - i. he becomes a representative or employee of the holder of a CMS licence for leveraged foreign exchange trading;
 - ii. he becomes an undischarged bankrupt whether in Singapore or elsewhere; or
 - iii. he has been convicted of a relevant offence.
- (c) where the person is a corporation and;
 - i. the corporation or its substantial shareholder is in the course of being wound up or dissolved;
 - ii. there is execution against the corporation or its shareholder in respect of a judgment debt which has been returned unsatisfied in whole or in part;
 - iii. a receiver, a receiver and manager, a judicial manager or such other person has been appointed in relation to, or in respect of any property of the corporation or its substantial shareholder;
 - iv. the corporation or its substantial shareholder has entered into a compromise or scheme of arrangement with its creditors; or
 - v. the corporation or its substantial shareholder has been convicted of a relevant offence.

Please refer to Section B Q5 on the meaning of relevant offence.

[Updated in Oct 02]

Q10 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?

A10 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. (Please refer to Section B Q1 for the exemptions given).

Specifically, under paragraph 8 of the Third Schedule to the SFA, a responsible person for a collective investment scheme as defined in section 283 of SFA is not required to hold a CMS licence in respect of its dealing in securities which are units that collective investment scheme, if such responsible person meets the following conditions:

- (1) The responsible person is also a holder of a CMS licence for fund management or an exempt person in respect of fund management; or
- (2) The responsible person deals in securities, which are units of that collective investment scheme, and 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
 - (e) an exempt financial adviser as defined in the FAA in respect of marketing of collective investment schemes.

[Updated in May 03]

Q11 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?

A11 All persons who carry on business in the regulated activity of providing custodial services for securities, as defined in Part II of the Second

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

Schedule to the SFA, are required to hold a CMS licence for that regulated activity, unless they fall within the exemptions given. (Please refer to Section B Q1 for the exemptions given). Such exemptions include those provided under paragraph 6 of the Second Schedule to the SFR.

[Updated in May 03]

Q12 Paragraph 8(1) of the Third Schedule to the SFA provides licensing exemption to a responsible person for a collective investment scheme ["CIS"] in respect of its dealing in securities if such responsible person is a licensed or exempt fund management company. Can such a responsible person deal in all securities, including units of the CIS which are not managed by it?

A12 No, the exemption given in paragraph 8(1) of the Third Schedule to the SFA is only in respect of the responsible person's dealing in securities, which are units of that CIS managed by it. In addition, under paragraph 2 of the Second Schedule to the SFR, a fund management company is exempted from holding a licence for dealing in securities where such dealing in securities is incidental to its carrying on business in fund management, such as dealing in the portfolio of securities held by the funds managed.

[Updated in Dec 03]

C) CUSTOMERS' MONEYS AND ASSETS

Q1 Are there similar trust account requirements in the SFA, to those stipulated in the repealed Securities Industry Act and Futures Trading Act?

A1 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]

Q2 What is meant by a trust account?

A2 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]

Q3 Can a CMS licence holder maintain a trust account with an overseas institution?

A3 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]

Q4 What is the time frame for CMS licence holders to deposit customers' moneys and assets into a trust account?

A4 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]

Q5 Are there any specific requirements which a CMS licence holder must observe when it opens a trust account with an institution?

A5 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]

Q6 Can a CMS licence holder keep the interest income or any other entitlements arising from the moneys or assets held in the trust account?

A6 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]

Q7 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?

A7 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]

Q8 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?

A8 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]

Q9 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?

A9 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]

Q10 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?

A10 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]

Q11 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?

A11 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]

Q12 What is the difference between Regulation 31 and Regulation 32 of the SFR? When are they applicable?

A12 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]

Q13 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?

A13 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]

D) BUSINESS CONDUCT RULES

Q1 With regard to the requirements on the keeping of books and records, can such records be kept electronically?

A1 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]

Q2 For how long should we keep the books and records?

A2 Licensees are required to maintain their books and records for at least 6 years. [Updated in Oct 02]

Q3 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?

A3 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]
- Q4 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?**
- A4 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]
- Q5 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?**
- A5 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]
- Q6 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?**
- A6 No. [Updated in Dec 03]
- Q7 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?**
- A7 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 Feb 03]

Q8 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?

A8 Yes, CMS licence holders can send these statements to their customers via electronic means. [Updated in Dec 03]

Q9 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?

A9 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]

Q10 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?

A10 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]

Q11 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?

A11 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]

Q12 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?

A12 "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]

Q13 The SFA prohibits CMS licence holders from giving unsecured credit to their officers and employees, and to those persons associated with or connected to such officers and employees, for the purpose of purchasing capital market products. Does this prohibition apply to the borrowing of securities by such persons from the CMS licence holders?

A13 Yes. A CMS licence holder that lends securities to its officers and employees, or to the associated or connected persons of such officers or employees, is considered to be granting credit to such persons. It should therefore obtain collateral from such persons and take necessary measures to ensure that the market value of such collateral remains at more than 100% of the market value of the securities lent. Should a shortfall in the value of the collateral inadvertently arise, the CMS licence holder should require the persons concerned to top up the collateral, or to return the securities borrowed. This should be done by the next business day after the shortfall arises, failing which the CMS licence holder should buy-in against these persons, i.e. buy the same type of securities at the cost of these persons so that these persons could return the securities borrowed.

[Updated in Oct 02]

Q14 Regulation 45(3) of the SFR requires a CMS licence holder, which lends securities to a borrower, to obtain collateral from the borrower. Can the CMS licence holder accept banker's guarantees and letters of credit as collateral?

A14 Yes.

[Updated in Oct 02]

Q15 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?

A15 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

Q1 Are there any requirements under the SFA or SFR that apply to a bank or other financial institutions?

A1 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]

Q2 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?

A2 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]

Q3 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?

A3 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]

Q4 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?

A4 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 Sixth schedule to the Banking Act or Third schedule to the Banking Regulations respectively on confidentiality obligations. [Updated in Feb 03]

Q5 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?

A5 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

Q1 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?

A1 Yes. [Updated in Oct 02]

Q2 Would MAS publish a list of the recognised trading system providers for purpose of complying with the SFA such as section 120?

A2 As provided in section 36(9) of the SFA, MAS would give notice in the Gazette of any recognised trading system provider that has been recognised under section 36(9). [Updated in Feb 03]

Q3 Does the definition of “bonds” include structured instruments and instruments with hybrid features, which are debt instruments issued as bonds?

A3 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]

Q4 Form 2 (Application of renewal of a CMS Licence) of the First Schedule to the SFR requires CMS licence holders to disclose information on substantial shareholders and related corporations. To what extent should such information be provided to MAS?

A4 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]

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