Monetary Authority of Singapore

SECURITIES AND FUTURES ACT

(CAP. 289)

FREQUENTLY ASKED QUESTIONS (FAQs) ON THE LICENSING AND REGISTRATION OF FUND MANAGEMENT COMPANIES

Disclaimer: These FAQs are meant to provide guidance to the industry on the licensing and registration of fund management companies. 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 legal and regulatory requirements, and to advise them on all applicable laws, rules and regulations of Singapore.

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FREQUENTY ASKED QUESTIONS (FAQs) ON THE LICENSING AND REGISTRATION OF FUND MANAGEMENT COMPANIES

Contents

A Registration and Licensing Requirements

1. Dealing in Securities – What type of licence is required for an FMC that intends to market funds to end investors or intermediaries? Are there any exemptions available for these activities?

An FMC that engages in marketing funds to end investors or intermediaries may be considered to be dealing in securities under the SFA. Where the funds are structured as CIS, the FMC may be considered to be marketing CIS under the FAA. An FMC, whether licensed or registered, may be exempt under paragraph 2(b)(i) of the Second Schedule to the SF(LCB)R, from the need to hold a CMS licence for dealing in securities where its fund-marketing activities (either for closed-end funds or CIS) are solely incidental to its fund management business. For instance, an FMC that markets funds for which it is the investment manager or investment sub-adviser, would qualify for the exemption.

In addition, under paragraph 2(k) of the Second Schedule to the SF(LCB)R, an FMC responsible for CIS that is authorised under s286 of the SFA, recognized under s287 of the SFA; or exempted under Subdivision (4) of Division 2 of Part XIII of the SFA, would be similarly exempted from the need to hold a CMS licence for dealing in securities being units of that CIS or the underlying securities that the CIS invests in.

2. Central Dealing – Is an FMC allowed to conduct central dealing activity for funds managed by its related entities?

An LFMC that conducts central dealing activity for funds managed by its related entities should apply to add to its licence the regulated activity of dealing in securities, trading futures contracts or leveraged foreign exchange trading, as may be applicable, depending on the type of financial instruments to be traded or dealt in. The FMC should ensure that it has met the relevant licensing requirements applicable to these activities. An RFMC should not engage in central dealing for funds managed by other persons, including its related entities.

3. Securities Borrowing & Lending – Is an FMC allowed to conduct the business of securities borrowing and lending in respect of its clients' portfolios?

Engaging in securities borrowing and lending is considered to be dealing in securities. As provided in paragraph 2(b)(i) of the Second Schedule to the SF(LCB)R, an FMC may deal in securities, so long as such activity is solely incidental to its fund management business.

4. <u>Independent Custody</u> – Would the requirement for independent custody of managed assets apply to an FMC that provides advice or research to other investment managers in respect of those managed assets?

An FMC that acts as investment adviser, sub-adviser, or that provides research to another investment manager should satisfy itself that the assets that it advises on are subject to independent custody as required under Regulation 13A(1)(c) of the SF(LCB)R. Notwithstanding that the FMC would not have direct responsibility for appointing the custodian, it must be able to demonstrate that it has taken reasonable steps to ascertain that the assets are subject to adequate safeguards including independent custody.

5. <u>Private Equity and Venture Capital Assets</u> – Are there circumstances where an FMC need not subject its managed assets to independent custody?

The requirement for independent custody of managed assets would not apply if the managed assets are not listed for quotation or quoted on a securities exchange, and are interests in a closed-end fund where the closed end fund is to be used for private equity or venture capital investments; and is offered only to accredited or institutional investors, as set out in Regulation 13A(4) of the SF(LCB)R.

If the managed assets are not subject to independent custody arrangements, the FMC is required to disclose this fact to the investors and to obtain their acknowledgement. The FMC is also required to provide the investor with an audit report of the assets each year.

Notwithstanding this, an FMC that manages private equity and venture capital funds is required to fully comply with client segregation requirements in respect of client moneys.

6. <u>Immovable Assets</u> – My company plans to manage a fund that will invest into immovable assets (i.e.: real estate and infrastructure). Are we required to apply for a CMS licence in fund management?

A company need not be registered with or licensed by MAS if it manages a fund that invests solely in immovable assets or in securities issued by investment holding companies whose sole purpose is to invest into real estate development projects and/or real estate properties; and where the fund is offered only to accredited and/or institutional investors. This is regardless of the size of the company's stake in the real estate development projects, the relationship between the developer and the company, the stage of completion of the development project and the receipt of any subsequent income yield following the completion of the project.

This exemption will not apply if the company is also engaged in the management of financial derivatives if such financial derivatives fall within the definition of "securities" or "futures contracts" as defined in the SFA; or in the management of investments into other real estate funds and schemes.

7. <u>Property Management</u> – My company's primary business involves the management of property, infrastructural and other physical assets on a day-to-day basis. Are we required to apply for a CMS licence in fund management?

Licensing or registration requirements would only apply where:

(a) the manager of the assets is an external (i.e.: non-in house) manager;

(b) the managed assets (whether in whole or in part) comprise a portfolio of securities and futures contracts; and

(c) the manager is in the business of fund management.

Managers of property funds that meet the criteria of a REIT as defined in the Second Schedule to the SFA, will be treated as REIT managers and are required to hold a CMS licence under the SFA to conduct REIT management.

8. <u>Business of Fund Management</u> – What does it mean to be "in the business of fund management"?

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.

9. <u>Reporting of Immovable Assets</u> – My company is considering to apply for a CMS licence for fund management. A portion of the assets managed by my company are invested in immovable real estate assets. Do we have to include the portion of the managed assets invested in real estate assets in the managed assets computation for purposes of licensing and statutory reporting?

Yes. The company should include immovable assets in the reporting of its managed assets, notwithstanding the exemption set out in paragraph 5(1)(h) of the Second Schedule to the SF(LCB)R.

10. Engagement of Audit Firms – Can my company engage the same audit firm who audits the annual financial statements to provide internal audit services to the company? Can we engage the same audit firm who audits the funds which we manage or advise, to provide internal audit services to the company?

When appointing an audit firm for the audit of its financial statements and/or the funds it manages, the FMC should satisfy itself that the audit firm has the capacity and competency to provide the audit services objectively and independently. The FMC should also consider the ability of the audit firm to complete the audit and provide the relevant certifications within 5 months of the end of the financial year, in order to meet the submission timeline set out in the regulations. The FMC may consider if the audit firm has put in place appropriate safeguards to minimize threats that may impair the independence of the audit firm in providing the audit services to the FMC. For instance, one safeguard that could be considered include having different engagement teams involved in providing the various services to the FMC.

11. Internal Audit Arrangements – My company would like to operate as an RFMC. What is considered to be adequate internal audit arrangements for my company?

Taking into consideration the size of the assets managed and number of investors that an RFMC may serve, MAS would consider there to be adequate audit arrangements if the RFMC has in place a process for regular internal reviews on the effectiveness of internal systems and controls. The CEO and directors of an RFMC are ultimately responsible for ensuring there are adequate internal controls within the RFMC and should take reasonable measures to ensure that internal controls are effective to address the risks arising in the course of the RFMC's operations.

B Registration and Licensing Procedures

12. Processing Time – How long would MAS take to process a registration or licensing application?

The processing of an application will commence upon MAS' receipt of a fully completed application form, and all relevant supporting documents. The processing time for a fully completed application from an applicant that meets the admission criteria will be approximately 12 weeks, excluding any delays caused by factors beyond MAS' control.

Where the applicant does not meet the admission criteria or licensing requirements, MAS reserves the right to terminate the processing of the application at any time. An applicant that makes incomplete submissions or that does not meet the admission criteria will be informed accordingly. Such an applicant may re-submit a fresh application to MAS when it is ready to do so.

13. Concurrent Submissions – My company has submitted a notification for commencement of business as an RFMC but has yet to be registered and listed on MAS' website. Can we submit a CMS licence application for fund management while the registration is being processed by MAS?

The company is strongly discouraged from submitting a CMS licence application for fund management while MAS is reviewing its notification for commencement of business as an RFMC as this may result in processing delays. Where concurrent submissions are made by the same company, the processing time of 12 weeks will commence from the date of receipt of the latest submission.

14. Business Commencement for RFMCs – Can my company commence business as soon as it submits its registration as an RFMC to the MAS?

MAS maintains an online directory of RFMCs on its website. Prior to being listed on this directory, an RFMC should not (a) represent itself as being registered with MAS; (b) enter into any investment management agreement; or (c) receive or invest any customer moneys.

The directory is available at the following link: https://secure.mas.gov.sg/fid

15. Lapsing of CMS Licence – My company has been granted a CMS licence to carry on the business of fund management. However, we have decided to hold back the commencement of the proposed activity. Can we continue to hold on to our licence?

The company will have to explain to MAS why it is unable to commence business in the regulated activity of fund management, 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, its CMS licence will lapse.

16. Lapsing of Registration – My company has just been registered with MAS as an RFMC to conduct the regulated activity of fund management. Will my registration lapse if my company delays the commencement of the fund management activity?

The company will cease to be an RFMC if it does not commence business in fund management within 6 months from the date of registration. Thereafter, the company would not be allowed to conduct the regulated activity of fund management. If it wishes to re-commence fund management activity, the company must re-submit a fresh notification to MAS to register as an RFMC or apply for a CMS licence.

17. <u>Business Cessation</u> – What are the procedures for cessation of business by an FMC?

The FMC should ensure an orderly winding down of its business prior to cessation. This includes but is not limited to: (i) putting in place communication plans to ensure sufficient notice period has been given to its customers, business partners and other relevant stakeholders regarding its cessation; and (ii) discharging all customer obligations and ensuring that customer assets and/or moneys have been accounted for and returned to customers before it ceases.

An LFMC that intends to cease the conduct of regulated activity is required to return its licence to MAS and to file a notice of cessation of business - Form 7 of the SF(LCB)R, not later than 14 days after the cessation of its business.

An RFMC that intends to cease the conduct of regulated activity is required to file a notice of cessation of business - Form 24A of the SF(LCB)R, prior to the cessation.

C Representative Notification Regime

18. <u>Applicability</u> – Does the representative notification regime apply to the directors and staff of an FMC?

The representative notification regime applies to all individuals who conduct the regulated activity of fund management and/or other regulated activities that are integral to fund management. In a typical FMC setting, individuals who are engaged in portfolio management, as well as those who are engaged in activities such as client servicing, business development, marketing, research and dealing functions are generally required to be appointed as representatives.

An LFMC will have to notify MAS of its intention to appoint an individual as a representative via the CoRe system. Only individuals whose names are listed on the Public Register may carry out the regulated activities.

The SF(LCB)R FAQs provide more information on the representative notification regime, such as the requirements imposed on different types of representatives, circumstances under which an individual will cease to be a representative and how the Public Register may be accessed.

The SF(LCB)R FAQs are available at the following link:

http://www.mas.gov.sg/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Funds-Management/FAQs/2012/FAQs-on-LCB.aspx

19. Macro-economic Research – Are research analysts who conduct macro-economic research subject to the representative notification regime?

Research analysts would not be deemed to be conducting fund management if they only provide general macroeconomic research to portfolio managers, and do not contribute or participate in any part of the fund management process, including investment decision making. The representative notification regime would not apply to such individuals.

20. Central Dealers – Are the LFMC's central dealers subject to the representative notification regime?

An individual who is engaged in central dealing for funds managed by related entities of the LFMC would have to be an appointed, provisional or temporary representative in respect of dealing in securities and/or trading in futures contracts under the representative notification framework, depending on the assets or markets covered by the individual.

An individual who is engaged only in dealing for funds managed by the LFMC would have to be appointed as a representative for the regulated activity of fund management under the representative notification framework.

D Transition

21. Lodgment of Forms 23, 24 and 25 – My company is an EFM as of 6 August 2012. During the six month transition period from 7 August 2012 to 6 February 2013, is my company required to continue lodging with MAS Form 23 (Change of Particulars), Form 24 (Business Cessation) and Form 25 (Annual Declaration)?

With the implementation of the enhanced regime for FMCs on 7 August 2012, an EFM is no longer required to lodge Forms 23, 24 and 25 with MAS. An EFM is only required to lodge Form 23 for any change of particulars, or Form 24 for cessation of business that occurs before 7 August 2012. The EFM should also lodge Form 25 in respect of any financial year (or period) that ended before 7 August 2012.

There are no changes to the lodgment requirements applicable to other types of exempt entities. For example, an EFM that is also operating as an EFA under

Regulation 27(1)(d) of the FAR should continue filing the relevant forms as required under the FAA and its subsidiary legislation.

Issued on 16 November 2012

Appendix

Acronyms Used In These FAQs

Listed Alphabetically

CIS	Collective Investment Scheme
CMS	Capital Markets Services
CoRe System	Corporations and Representatives System
EFA	Exempt Financial Adviser
EFM	Exempt Fund Manager
FAA	Financial Advisers Act
FAR	Financial Advisers Regulations
FMC	Fund Management Company. This term is used to refer to LFMC and RFMC collectively.
LFMC	Licensed Fund Management Company
REIT	Real Estate Investment Trust
RFMC	Registered Fund Management Company
SFA	Securities And Futures Act
SF(LCB)R	Securities And Futures (Licensing And Conduct Of Business) Regulations