Transfer Of Regulatory Oversight Of Commodity Futures From IE to MAS
PREFAE

Commodity futures are currently regulated under the Commodity Trading Act ("CTA") by International Enterprise Singapore ("IE")\(^1\). IE and the Monetary Authority of Singapore ("MAS") propose to transfer regulatory oversight of commodity futures from IE under the CTA to MAS under the Securities and Futures Act ("SFA") and the Financial Advisers Act ("FAA"). This would subject commodity futures to the same regulatory framework as other types of futures contracts (such as financial futures contracts) currently regulated by MAS.

The objective of this transfer is to facilitate Singapore’s growth as a hub for commodity futures trading. A single regulator for all futures related activities would streamline licensing and compliance, as entities broking both commodity futures and financial futures (regulated by MAS) would only need a single licence from MAS.

If no significant policy changes arise from the feedback to this consultation paper, the transfer of regulatory oversight of commodity futures from IE under the CTA to MAS under the SFA and FAA is targeted to take place in the fourth quarter of 2007 ("4Q07"). The detailed timing will be confirmed when the relevant regulations are published; the regulations are targeted for publication by the second quarter of 2007 ("2Q07"). For entities and representatives affected by this proposed change, transitional measures as described in this paper would apply.

MAS and IE would like to invite comments from the public on the proposed transfer of regulatory oversight of commodity futures from IE under the CTA to MAS under the SFA and FAA. Please provide your responses to the questions posed, as well as any views or suggestions that you may have by 15 Jan 2007. Written comments may be submitted to:

Market Conduct Policy Division,
Market and Business Conduct Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building, Singapore 079117

\(^1\) Under the CTA, IE has regulatory oversight of entities and representatives dealing in commodity futures, including commodity futures markets, commodity futures brokers, commodity futures advisers, as well as representatives of commodity futures brokers and advisers.
Email: cfutures_06@mas.gov.sg
Fax: 6225-9766

Please note that all submissions may be made public unless confidentiality is specifically requested for whole or part of the submission.
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1 PROPOSAL FOR MAS TO ASSUME REGULATORY OVERSIGHT OF COMMODITY FUTURES

1.1 COMMODITY FUTURES TO BE PRESCRIBED AS A TYPE OF “FUTURES CONTRACT” FOR THE PURPOSES OF THE SFA AND THE FAA

1.1.1 MAS and IE propose that regulatory oversight of commodity futures be transferred from IE under the CTA to MAS under the SFA and FAA. Once implemented, commodity futures would be subject to the same regulatory framework as other types of futures contracts (such as financial futures contracts) currently regulated by MAS. When this is implemented, commodity futures markets, clearing facilities, intermediaries and entities advising on commodity futures would fall within the scope of the SFA and FAA. The following paragraphs summarise the effect of the proposed transfer on the relevant entities and representatives.

1.1.2 Intermediaries. Broking in commodity futures would fall under the activity of "trading in futures contracts" as defined under the Second Schedule to the SFA, and a person who brokers commodity futures would in turn require a capital markets services ("CMS") licence or a representative’s licence.

1.1.3 Futures markets. A commodity futures market would fall under the definition of "futures market" in paragraph 2 of Part I of the First Schedule to the SFA, and operators of such markets would need to apply to MAS to be approved exchanges, recognised market operators or exempt market operators.

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2 It is proposed that commodity futures be brought within the scope of the SFA and FAA through the prescription (by way of regulations) of commodity futures as a type of “futures contract” under section 2 of the SFA and FAA.

3 The “Guidelines on the Regulation of Markets” [Guideline No. SFA 02-G01] provide guidance on when a market operator may be regulated as an approved exchange or recognised market operator, or exempted as an exempt market operator.
1.1.4 **Clearing Facilities.** A commodity futures clearing facility would fall under the definition of "clearing facility" in paragraph 4 of Part II of the First Schedule to the SFA, and operators of such clearing facilities would need to notify MAS of their operation. MAS may designate an operator of a commodity futures clearing facility as a "designated clearing house" if it is deemed to be necessary\(^4\).

1.1.5 **Advising.** Advising on commodity futures would constitute a type of financial advisory service under the FAA. Corporations giving advice on commodity futures would require a financial adviser’s licence and individuals acting on behalf of such corporations in providing such advice would require a representative’s licence, unless they qualify as exempt financial advisers\(^5\) under the FAA or are representatives of the exempt financial advisers respectively.

1.2 **Regulatory Oversight of Over-the-Counter Commodity Derivatives and Spot Commodity Contracts to Remain with IE Under the CTA**

1.2.1 Apart from commodity futures contracts, IE also has regulatory oversight of over-the-counter ("OTC") commodity derivatives and spot commodity contracts under the CTA\(^6\). OTC commodity derivatives and spot commodity contracts were added to the scope of the CTA in 2001. The objective then for licensing the dealing in such products was to keep out bucket-shops (which were defrauding the public) and not to place curbs on legitimate dealing in OTC commodity derivatives (conducted primarily among institutions) or legitimate commodity spot broking (including ordinary retailing).

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\(^4\) The “Guidelines on the Regulation of Clearing Facilities” [Guideline No. SFA 03-G01] provide guidance on when a person operating a clearing facility may be designated as a designated clearing house.

\(^5\) Exempt financial advisers are financial institutions such as banks, insurance companies, and holders of capital markets services licences which are exempted from the licensing requirements under section 23(1)(a) to 23(1)(ea) of the FAA. These institutions are licensed/registered under other legislation administered by MAS.

\(^6\) Such OTC commodity derivative contracts are commodity forward contracts, leveraged commodity trading and commodity contracts for differences. They are typically bilaterally negotiated and not traded according to the rules of an organised exchange, and are presently primarily traded by institutional investors. Spot commodity contracts refer to contracts for the purchase or sale of a commodity at its current market or spot price, where it is intended that such transactions would result in the physical delivery of the commodity.
To this end, most legitimate brokers dealing in OTC commodity derivatives and commodity spots are exempted from licensing under the CTA\(^7\). As the framework under the CTA continues to be primarily about the prevention of bucket shops, we intend for the regulatory oversight of OTC commodity derivatives and spot commodity contracts to remain with IE under the CTA. In this respect, MAS and IE will continue to monitor market developments, and make regulatory changes if and when necessary.

Questions:

Q1 We seek views on the proposal to transfer regulatory oversight of commodity futures from IE under the CTA to MAS under the SFA and FAA.

Q2 We seek views on the proposal for regulatory oversight of OTC commodity derivatives and commodity spot contracts to remain with IE under the CTA.

1.3 DEFINITION OF “COMMODITY”

1.3.1 Under the CTA, the definition of “commodity” includes all tangible commodities (e.g. rubber, cotton, etc.), while intangible commodities (e.g. freight derivatives, weather derivatives, etc.) may be included through prescription by way of regulations\(^8\). No intangibles have been prescribed by IE under the CTA. After the transfer of the regulatory oversight of commodity futures to MAS, the intention is to preserve the status quo under the CTA i.e. at the outset, futures contracts on tangible commodities would be brought within the ambit of the SFA and FAA, while intangible commodities may be prescribed as “futures contracts” under the SFA and FAA as necessary and appropriate on a case-by-case basis. This is a deliberately cautious approach.

\(^7\) The CTA generally exempts entities which deal only with accredited investors from licensing as OTC commodity derivative brokers, as well as ordinary retail trade from licensing as commodity spot brokers.

\(^8\) “Commodity” is defined in section 2 of the CTA to mean “any produce, item, goods or article that is the subject of any

(a) commodity futures contract;

(b) commodity forward contract;

(c) leveraged commodity trading;

(d) contract made pursuant to trading in differences; or

(e) spot commodity trading,

and includes indices, rights and interests in such commodity, and other indices, rights or interests of any nature that the Minister may, by notification in the Gazette, prescribe to be a commodity;”
intended to avoid an abrupt expansion of the range of regulated futures contracts.

Questions:
Q3 We seek views on the proposal that, at the outset, tangible commodity futures should be brought within the ambit of the SFA and FAA, while intangible commodity futures be included through prescription when necessary and appropriate under the SFA and FAA on a case-by-case basis.

1.4 TIMELINE FOR TRANSFER OF REGULATORY OVERSIGHT

1.4.1 Subject to the extent of feedback on this consultation paper, the transfer of regulatory oversight of commodity futures from IE under the CTA to MAS under the SFA and FAA is targeted for 4Q07. The detailed timing will be confirmed when the relevant regulations are published; the regulations are targeted for publication by 2Q07. For entities affected by this proposed change and which are currently licensed or exempted by IE under the CTA, transitional measures as detailed in the sections below will apply.

Questions:
Q4 We seek views on the proposed timeframe for the transfer of regulatory oversight of commodity futures from IE under the CTA to MAS under the SFA and FAA.

2 PROPOSED TRANSITIONAL ARRANGEMENTS

2.1.1 Transitional arrangements would need to be provided for entities and representatives currently dealing in commodity futures, in order to facilitate their transfer from the regulatory oversight by IE under the CTA to MAS under the SFA and FAA. These proposed arrangements are described in the sub-sections below.

2.1.2 In the following sub-sections, the following key terms are used:
- “Transfer Date” or “T” refers to the date of transfer of regulatory oversight of commodity futures from IE to MAS (targeted for 4Q07).
• “ANC or RBC requirements under the SFA” refer to the Adjusted Net Capital (“ANC”) or Risk Based Capital (“RBC”) requirements under the SFA. These requirements are set out in the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations.

• “Base capital requirements under the SFA” refer to the base capital requirements under the SFA set out in the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations.

• “Business conduct rules under the SFA” refer to Parts V, VI and VII (Division 1) of the SFA, the Securities and Futures (Licensing and Conduct of Business) Regulations and any other relevant Notices and guidelines.

• “Business conduct rules under the FAA” refer to provisions under Part III of the FAA and Parts II, IV and VI of the Financial Advisers Regulations (Rg 2) and any other relevant Notices and guidelines.

• “CTA’s ANC requirements” refer to the Adjusted Net Capital requirements under the CTA set out in the Commodity Trading Regulations.

2.2 PROPOSED TRANSITIONAL MEASURES FOR COMMODITY FUTURES MARKETS AND CLEARING FACILITIES

2.2.1 Regulation of the Singapore Commodity Exchange (“SICOM”). SICOM is currently the only commodity futures exchange regulated under the CTA. On the Transfer Date, it is proposed that SICOM’s commodity futures market be regulated under the SFA by recognising SICOM as a recognised market operator, while the clearing facility operated by SICOM would be regulated under the SFA as a clearing facility.

2.2.2 Operators of commodity futures markets and clearing facilities currently not regulated by IE. There may be other operators of commodity futures markets and clearing facilities that are currently not regulated by IE, but which may fall within MAS’ regulatory ambit after the transfer of regulatory oversight. Examples would include commodity futures market operators that were previously exempted by IE, and overseas commodity futures market operators that would fall within the ambit of the SFA by reason of extra-
territorial provisions under the SFA. It is proposed that the operators of such commodity futures markets be required to apply to MAS at least three months prior to the Transfer Date, to be approved as an approved exchange, recognised as a recognised market operator, or exempted as an exempt market operator, as the case may be, under the relevant provisions in the SFA should they wish to continue to operate commodity futures markets after the migration. It is also proposed that the operators of such commodity futures clearing facilities be required to notify MAS at least 60 business days prior to the Transfer Date, should they wish to operate commodity futures clearing facilities on or after the Transfer Date.

Questions:

Q5 We seek views on the proposed arrangements for operators of commodity futures markets and clearing facilities currently not regulated by IE, but which may fall under MAS’ regulatory ambit after the transfer of regulatory oversight for commodity futures. Please also inform us if you operate such a commodity futures market or clearing facility and expect to need to apply to or notify MAS.

2.3 PROPOSED ARRANGEMENTS TO TRANSFER REGULATORY OVERSIGHT OF ENTITIES AND REPRESENTATIVES BROKING IN COMMODITY FUTURES

2.3.1 Entities brokering in commodity futures are currently either regulated by IE under the CTA via commodity futures brokers (“CFB”) licences or exempted from the requirement to hold CFB licences. There are four groups of entities which may need to be migrated to, licensed or exempted under the SFA (as CMS licensees for trading in commodity futures), namely:

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9 Commodity futures markets operating outside Singapore which offer services in Singapore may be caught under extra-territorial provisions in section 339 of the SFA. The “Guidelines on the Regulation of Markets” [Guideline No. SFA 02-G01] and “Guidelines on the Regulation of Clearing Facilities” [Guideline No. SFA 03-G01] provide guidance on the application of section 339 of the SFA to markets and clearing facilities respectively.

10 Section 49(1) of the SFA requires that operators of clearing facilities notify MAS at least 60 business days prior to the establishment or commencement of operation of such clearing facilities. Since the transfer of the regulatory oversight from the CTA to the SFA will only take effect on the Transfer Date, this requirement means that the operators of such commodity futures clearing facilities should notify MAS under s49(1) of the SFA at least 60 business days prior to the Transfer Date if they wish to operate commodity futures clearing facilities on or after the Transfer Date.
• **Group 1**: Entities currently holding only CFB licences;
• **Group 2**: Entities currently holding both CFB and CMS licences for trading in futures contracts;
• **Group 3** Banks and merchant banks engaging in commodity futures broking but which are currently exempted from holding CFB licences; and
• **Group 4**: Entities (apart from banks and merchant banks) currently exempted from holding CFB licences under no action letters issued by IE.

2.3.2 We are not aware of the existence of any entity which does not fall within the descriptions set out in paragraph 2.3.1 above, but which is currently involved in commodity futures broking in Singapore. Such entities, if any, would be responsible for determining whether they would be caught under the SFA and/or FAA, and if necessary, would need to meet the licensing criteria and apply for the relevant licences at least three months before the Transfer Date. Such entities could include commodity futures brokers and advisers operating outside Singapore that carry out commodity futures broking activities in Singapore, and may fall within the ambit of the SFA/FAA by reason of the extra-territorial provisions under section 339 of the SFA and/or section 90 of the FAA\(^1\).

2.3.3 The following sub-sections describe the proposed arrangements and transitional measures for transferring regulatory oversight of Groups 1 to 4 from IE (under the CTA) to MAS (under the SFA and FAA).

\(^1\) Note that brokers and advisers must have operations in Singapore in order to be granted a CMS licence or financial advisers licence.
Group 1: Entities currently holding only CFB licences

Based on information available to us, we believe that there are six entities which fall under Group 1 (being entities that hold only CFB licenses and not also CMS licenses). These entities are set out in Annex 1. We note that all six of these entities are SICOM members that engage in commodity futures broking (“SICOM broking members”).

2.3.5 Transfer to CMS licence. Group 1 entities shall be deemed to hold a CMS licence to trade in futures contracts from Transfer Date if the
entities submit requisite information to MAS in a prescribed form\textsuperscript{12} at least three months before the Transfer Date and satisfy the fit and proper requirements as described in MAS’ “Guidelines on Fit and Proper Criteria” [Guideline No. MCG-G01]. On the Transfer Date, SICOM broking members would have to meet relevant requirements under the SFA, such as the base capital requirements under the SFA and business conduct rules under the SFA (except for the ANC or RBC requirements under the SFA which they would be given up to three years to meet).

2.3.6 The ANC or RBC requirements under the SFA. SICOM broking members would be given up to three years from the Transfer Date to move from compliance with the CTA’s ANC requirements to compliance with the ANC or RBC requirements under the SFA. If a SICOM broking member chooses to continue to comply with CTA’s ANC requirements during this three year period, it may broker only (a) rubber futures contracts on any market; and (b) any other commodity futures contracts which it had already been broking prior to the Transfer Date, and only on markets on which it had already been broking such contracts. At any time during the three-year transition period, SICOM broking members may choose to comply with the prevailing ANC or RBC requirements under the SFA and have the restrictions on their business lifted\textsuperscript{13}. After the three-year transition period, SICOM broking members would be required to meet all relevant requirements under the SFA, including the prevailing ANC or RBC requirements under the SFA.

2.3.7 Restrictions on business if unable to meet the SFA guideline to have $100m in group shareholder’s funds. MAS’ “Guidelines on Criteria for the Grant of a Capital Markets Services Licence” [Guideline No. SFA 04-G01] require that applicants applying to trade in futures contracts have minimum group shareholders’ funds of S$100 million. For existing CFB licence holders which are able to meet the ANC or RBC requirements under the SFA but are unable to meet the $100 million group shareholder’s funds requirement, we

\textsuperscript{12} The information required in the form would be the particulars of the broker, its directors, shareholders, group structure, and declaration that it is able to meet the MAS’ fit and proper criteria as described in MAS’ “Guidelines on Fit and Proper Criteria” [Guideline No. MCG-G01].

\textsuperscript{13} Please note that financial requirements for CMS licensees under the SFA may be reviewed periodically by MAS. SICOM broking members would be required to comply with the financial requirements under the SFA as they stand at the time at which they move from compliance with the CTA’s ANC requirements to full compliance with the SFA.
intend to restrict their activity to commodity futures trading only (instead of permitting them to trade futures contracts in general).

2.3.8 FAA requirements. If a SICOM broking member provides advice\(^{14}\) in respect of commodity futures contracts, it would need to lodge a notification form\(^{15}\) with MAS within 14 days of the Transfer Date for the conduct of financial advisory services as an exempt financial adviser under the FAA. The broker would be subject to the business conduct rules under the FAA\(^{16}\) but it would be exempted from the requirements in MAS’ “Notice on Recommendations on Investment Products” [Notice FAA-N01] and MAS’ “Notice on Information to Clients and Product Information Disclosure” [Notice FAA-N03], if the advice provided by the SICOM broking member satisfies the definition of “execution-related advice”\(^{17}\).

2.3.9 Representatives. The following transitional measures are proposed for representatives of SICOM broking members:

- For representatives who hold CFB representative’s licences under the CTA, their CFB representative licenses would be deemed as CMS representative’s licences for trading in futures contracts under the SFA on the Transfer Date if they submit requisite information to MAS in a prescribed form\(^{18}\) at least three months before the Transfer Date and they meet the fit and proper requirements as described in MAS’ “Guidelines on Fit and Proper Criteria” [Guideline No.CG-G01]. These representatives would be given the status of exempt financial adviser’s representatives under the FAA (if they also provide advice on commodity futures). Note that CMS licensees are required to have a minimum of 2 licensed representatives.

\(^{14}\) Futures brokers typically provide execution related advice incidental to their broking activities
\(^{15}\) Form 20 of the Financial Advisers Regulations (Rg 2)
\(^{16}\) Sections 23(4) and 23(5) of FAA specify the applicable business conduct requirements for exempt financial advisers, and their representatives, respectively under the FAA.
\(^{17}\) “Execution-related advice” means advice provided by the broker which is solely incidental to its commodity futures broking activities, as defined in Notice FAA-N01 and Notice FAA-N03.
\(^{18}\) The information required in the form would be the individual’s personal particulars, academic qualifications, employment history, and a declaration by the individual that he meets MAS’ fit and proper criteria as described in MAS’ “Guidelines on Fit and Proper Criteria” [Guideline No.MCG-G01].
- Representatives of SICOM broking members who do not hold CFB representative’s licences (such as “associated persons” registered with SICOM\(^{19}\)) would be required to apply for a CMS representative’s licence. If such representatives wish to continue to engage in commodity futures broking after the Transfer Date, they would be required to apply for a CMS representative’s licence at least three months prior to the Transfer Date. Note that CMS licensees are required to have a minimum of 2 licensed representatives. These representatives would also be given the status of exempt financial adviser’s representatives under the FAA if they also provide advice on commodity futures.

- Representatives would be required to pass the relevant examinations required under the SFA and FAA (if they also provide advice on commodity futures) by the Transfer Date, although exemptions from certain modules may be granted, as set out in the sub-section under the header “Examination requirements for representatives under the SFA and FAA” (paragraph 2.3.23).

**Questions:**

Q6 We seek views on the proposed arrangements to transfer regulatory oversight of (i) entities currently holding only CFB licences; and (ii) their representatives from IE under the CTA to MAS under the SFA and FAA.

\(^{19}\) An “associated person” is defined in SICOM’s business rules as “an employee or officer of Market Maker or Broker acting or holding himself out as a sales representative for Contracts, in the name of the Market Maker or Broker”.
Group 2: Entities currently holding both CFB and CMS licence for trading in futures contracts

2.3.10 Based on information available to us, we believe that there are ten entities which fall under Group 2 (being entities that currently hold CFB licenses as well as CMS licenses to trade in futures contracts). These entities are set out in Annex 2.

2.3.11 Lapsing of CFB licence on Transfer Date. For Group 2 brokers, it is contemplated that their CFB licences would lapse on the Transfer Date, and their commodity futures broking activities would be carried out under their CMS licences to trade in futures contracts. Group 2 brokers would have to comply with all relevant requirements under the SFA from the Transfer Date. No transitional period would be provided for these entities as they should not have difficulties complying with the relevant requirements under the SFA given that they are already existing CMS licensees.

2.3.12 FAA requirements. If a Group 2 broker provides advice\(^\text{20}\), it would need to lodge a notification form\(^\text{21}\) with MAS within 14 days of the Transfer Date.

\(^{20}\) Futures brokers typically provide execution related advice incidental to their broking activities.

\(^{21}\) The requisite form is Form 20 of the Financial Advisers Regulations (Rg 2), if the holder of CMS licence had not previously notified MAS that it is engaged in the provision of financial advisory services as an exempt FA. If the holder of CMS licence had previously submitted
Date for the conduct of financial advisory services as an exempt financial adviser under the FAA in respect of commodity futures. These Group 2 brokers would also be subject to the business conduct rules under the FAA but they would be exempted from the requirements in MAS' “Notice on Recommendations on Investment Products” [Notice FAA- N01] and MAS' “Notice on Information to Clients and Product Information Disclosure” [Notice FAA-N03], if the advice provided by the broker satisfies the definition of “execution-related advice”.

2.3.13 Representatives. The following are proposed transitional measures for representatives of Group 2 brokers:

- For representatives who hold CFB representative’s licences under the CTA (but not CMS representative’s licences), their CFB representative’s licenses would be migrated to CMS representative’s licences for trading in futures contracts under the SFA on the Transfer Date, and they would be given the status of exempt financial adviser’s representatives under the FAA (if they also provide advice on commodity futures). Migration would be conditional on the representatives meeting the fit and proper requirements as described in MAS' “Guidelines on Fit and Proper Criteria” [Guideline No. MCG-G01]. For the purposes of migration, these representatives would have to submit requisite information to MAS in a prescribed form at least three months before the Transfer Date.

- For representatives who hold both a CFB representative’s licences under the CTA and a CMS representative’s licence for trading in futures contracts their commodity futures broker representative’s licences would lapse on the Transfer Date.

- Representatives would be required to pass the relevant examinations, required under the SFA and, if they also provide

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Form 20, it is to file Form 21 of the Financial Advisers Regulations (Rg 2) for the provision of financial advisory services in respect of commodity futures.

22 Sections 23(4) and 23(5) of FAA specify the applicable business conduct requirements for exempt financial advisers, and their representatives, respectively under the FAA.

23 “Execution-related advice” means advice provided by the broker which is solely incidental to its commodity futures broking activities, as defined in Notice FAA- N01 and Notice FAA-N03.

24 The information required in the form would be the individual’s personal particulars, academic qualifications, employment history, and a declaration by the individual that he meets MAS’ fit and proper criteria as described in MAS’ “Guidelines on Fit and Proper Criteria” [Guideline No.MCG-G01].
advice on commodity futures, under the FAA, by the Transfer Date, although exemptions from certain modules may be granted, as set out in the sub-section under the header “Examination requirements for representatives under the SFA and FAA” (paragraph 2.3.23).

Questions:

Q7 We seek views on the proposed arrangements to transfer regulatory oversight of the commodity futures broking activities of (i) entities currently holding both CFB and CMS licences; and (ii) their representatives from IE under the CTA to MAS under the SFA and FAA.

Group 3: Banks and merchant banks currently exempted from holding CFB licences

- Lodgement of notification form to MAS to trade in commodity futures contracts within 14 days from T.
- Lodgement of notification form to MAS to provide financial advisory services as exempt financial adviser within 14 days from T.

Exempted from requirement to hold CFB licence for commodity futures broking.

*Exempted from holding CMS licence.
*Required to comply with business conduct requirements under the SFA and FAA in relation to commodity futures broking
*Not required to comply with base capital requirements under the SFA or ANC or RBC requirements under SFA (in relation to commodity futures broking business)

2.3.14 Under the CTA, banks and merchant banks which carry on business as commodity futures brokers are exempted from holding CFB licences. After the Transfer Date, such brokers would not need to hold CMS or financial adviser’s licence, but would be subject to the business conduct
rules under the SFA\textsuperscript{25} for their commodity futures broking activities. Group 3 brokers would not be required to comply with the base capital requirements under the SFA or ANC or RBC requirements under the SFA (in relation to their commodity futures broking activities).

2.3.15 Group 3 brokers would also be required to lodge a notification form\textsuperscript{26} with MAS within 14 days of the Transfer Date to inform MAS that they are engaging in trading commodity futures contracts.

2.3.16 FAA requirements. If a Group 3 broker provides advice\textsuperscript{27} in relation to commodity futures broking, it would need to lodge a notification form\textsuperscript{28} with MAS within 14 days of the Transfer Date to conduct financial advisory services in respect of commodity futures as an exempt financial adviser under the FAA. These Group 3 brokers would also be subject to the business conduct rules under the FAA but they would be exempted from the requirements in MAS’ “Notice on Recommendations on Investment Products” [Notice FAA- N01] and MAS’ “Notice on Information to Clients and Product Information Disclosure” [Notice FAA-N03], if the advice provided by the broker satisfies the definition of “execution-related advice.”\textsuperscript{29}

\textsuperscript{25} Regulation 54 of the Securities and Futures (Licensing and Conduct of Business) Regulations lists the applicable business conduct requirements under the SFA for banks and merchant banks.

\textsuperscript{26} The requisite form would be Form 26 of the Securities and Futures (Licensing and Conduct of Business) Regulations, if the bank or merchant bank had not previously notified MAS that it is engaged in a regulated activity listed under Part I of the Second Schedule of the SFA. If the bank or merchant bank had previously submitted Form 26, the requisite form would be Form 27 of the Securities and Futures (Licensing and Conduct of Business) Regulations to inform MAS of a change in the types of regulated activities and/or products traded, since with effect from the transfer date, trading in commodity futures would be deemed to be trading in futures contracts under the SFA.

\textsuperscript{27} Futures brokers typically provide execution related advice incidental to their broking activities.

\textsuperscript{28} If the bank or merchant bank had not previously notified MAS that it is engaged in the provision of financial advisory services as an exempt FA, the requisite form would be Form 20 of the Financial Advisers Regulations (Rg 2). If the bank or merchant bank had previously submitted Form 20, the requisite form would be Form 21 of the Financial Advisers Regulations (Rg 2) for the provision of financial advisory services in respect of commodity futures.

\textsuperscript{29}``Execution-related advice” means advice provided by the broker which is solely incidental to its commodity futures broking activities, as defined in Notice FAA- N01 and Notice FAA-N03.
2.3.17 Representatives. The following are proposed measures for representatives of Group 3 brokers:

- After the Transfer Date, representatives of Group 3 brokers would be treated as exempt CMS representatives under the SFA and, if they provide advice on commodity futures, treated as exempt financial adviser’s representatives under the FAA. While these representatives would be exempted from licensing under the SFA and FAA, they would need to meet the relevant requirements under the SFA and FAA, including the fit and proper requirements as described in MAS’ "Guidelines on Fit and Proper Criteria" [Guideline No. MCG-G01], as well as comply with business conduct rules under the SFA and FAA.

- Representatives would be required to pass the relevant examinations required under the SFA and, if they also provide advice on commodity futures, under the FAA by the Transfer Date, although exemptions from certain modules may be granted, as set out in the sub-section under the header “Examination requirements for representatives under the SFA and FAA” (paragraph 2.3.23).

Questions:

Q8 We seek views on the proposed arrangements to transfer regulatory oversight of commodity futures broking activities of banks and merchant banks from IE under the CTA to MAS under the SFA and FAA.

Group 4: Entities currently exempted from holding CFB licences under no action letters issued by IE (apart from banks and merchant banks)

- CMS licence approved or rejected, depending on whether applicant meets admission criteria.
- Upon obtaining the CMS licence, submit requisite information to MAS to conduct business as exempt financial adviser within 14 days from T.

*Regulated by MAS under SFA and FAA. The broker would have to meet all relevant requirements under the SFA and FAA, including base capital requirements under the SFA, business conduct requirements under SFA, and business conduct rules under the FAA.

*The broker would also need to comply with the ANC or RBC requirements under the SFA.
2.3.18 Based on information available to us, there are entities which fall under Group 4 (being entities, apart from banks and merchant banks, exempted from holding CFB licences under no action letters issued by IE). These entities would not be automatically exempted under the SFA and/or FAA, and the need for licensing would depend on the scope of their activities, assessed on a case by case basis. If a Group 4 broker engages in commodity futures broking, a fresh application for a license under the SFA would be required (as described in the next paragraph). However, we understand that many Group 4 brokers are purely proprietary commodity futures traders, which, if in fact the case, would be exempted from CMS licensing requirements under the SFA. We also understand that some Group 4 brokers may be engaged in OTC commodity derivatives trading or commodity spot trading, but not commodity futures broking, in which case they would not be affected by the transfer of regulatory oversight for commodity futures from IE to MAS. All brokers which fall under Group 4 would have to be responsible for examining the scope of their activities to determine if they would need to be licensed under the SFA and/or the FAA.

2.3.19 If a Group 4 broker is required to be licensed as a CMS licensee under the SFA, the requirements in the paragraphs below will apply.

2.3.20 Application for CMS licence. The entity would be required to submit the application for a CMS licence at least three months prior to the Transfer Date. The CMS licence would be approved or rejected depending on whether the entity meets the admission criteria. As CMS licensees, they would be subject to the base capital requirements under the SFA, ANC or RBC requirements under the SFA, and business conduct rules under SFA.

2.3.21 FAA requirements. If a Group 4 broker provides advice, it would need to lodge a notification form with MAS within 14 days of the Transfer Date to conduct financial advisory services as an exempt financial adviser under the FAA. These Group 4 brokers would also be subject to the business conduct rules under the FAA but they would be exempted from the requirements in MAS’ “Notice on Recommendations on Investment Products” [Notice FAA- N01] and MAS’ “Notice on Information to Clients and Product

30 Futures brokers typically provide execution related advice incidental to their broking activities
31 Form 20 of the Financial Advisers Regulations (Rg 2)
Information Disclosure” [Notice FAA-N03], if the advice provided by the broker satisfies the definition of “execution-related advice”\(^{32}\).

2.3.22 **Representatives.** The following transitional measures apply to representatives of these Group 4 brokers:

- Representatives of Group 4 brokers would be required to apply for a CMS representative’s licence at least three months prior to the Transfer Date. These representatives would also be granted the status of exempt financial adviser’s representatives under the FAA if they also provide advice on commodity futures. Note that CMS licensees are required to have a minimum of 2 licensed representatives.

- Representatives would be required to pass the relevant examinations required under the SFA and, if they also provide advice on commodity futures, under the FAA by the Transfer Date, although exemptions from certain modules may be granted. These examination requirements and exemptions are described in the sub-section under the header “Examination requirements for representatives under the SFA and FAA”(paragraph 2.3.23).

Questions:

Q9 We seek views on the proposed arrangements to transfer regulatory oversight of entities exempted from holding CFB licences under no action letters issued by IE, and their representatives, from IE under the CTA to MAS under the SFA and FAA.

**Proposed examination requirements for representatives carrying out commodity futures activities under the SFA and FAA**

2.3.23 Representatives carrying out commodity futures activities under the SFA and FAA would be subject to examinations requirements under the SFA and FAA, and unless an exemption is provided, would be required to have passed the relevant examinations by the Transfer Date. The examination

\(^{32}\)“Execution-related advice” means advice provided by the broker which is solely incidental to its commodity futures broking activities, as defined in Notice FAA- N01 and Notice FAA- N03.
requirements as well as proposed exemptions are as described in the following table.

<table>
<thead>
<tr>
<th>Exam</th>
<th>Module is a requirement for:</th>
<th>Exemptions provided for Group 1, Group 2 and Group 3 brokers' representatives as at the Transfer Date.</th>
<th>Exemptions provided for representatives of Group 4 brokers as at Transfer Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Module 2 – Rules and regulations for trading in futures contracts</td>
<td>Licensed and exempt CMS representatives who trade in futures contracts.</td>
<td>Exempted from Module 2 if they have 3 years of relevant and continuous working experience in Singapore.</td>
<td>No exemption.</td>
</tr>
<tr>
<td>Module 5 – Rules and regulations for financial advisory services</td>
<td>Licensed and exempt FA representatives.</td>
<td>Exempted from Module 5 if they have 3 years of relevant and continuous working experience in Singapore.</td>
<td>No exemption.</td>
</tr>
<tr>
<td>Module 7 - Product Knowledge, Futures Products and Analysis</td>
<td>Licensed and exempt CMS representatives &amp; FA representatives.</td>
<td>Exempted from Module 7 if they have (a) 3 years of relevant and continuous working experience in respect of trading in futures contracts or the financial advisory service to be provided, as the case may be; or (b) qualifications as listed in Annex 2 of</td>
<td></td>
</tr>
<tr>
<td>Exam</td>
<td>Module is a requirement for:</td>
<td>Exemptions provided for Group 1, Group 2 and Group 3 brokers’ representatives as at the Transfer Date.</td>
<td>Exemptions provided for representatives of Group 4 brokers as at Transfer Date</td>
</tr>
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<td></td>
<td></td>
<td>(N.B. The exemptions from Module 7 described in this box are existing exemptions already provided for in [Notice No. SFA04-N06] and [Notice No. FAA-N07])</td>
<td></td>
</tr>
</tbody>
</table>

Questions:
Q10 We seek views on the proposed exemptions from examination requirements under the SFA and FAA.
Annex 1

ENTITIES CURRENTLY HOLDING ONLY CFB LICENCES

(Based on available information)

1. Transworld Rubber Pte Ltd
2. Kanetsu Singapore Pte Ltd
3. Okato Shoji Singapore Pte Ltd
4. Yutaka Shoji Singapore Pte Ltd
5. Dexin Commodities Pte Ltd
6. Phillip Trading Pte Ltd
ENTITIES CURRENTLY HOLDING BOTH CFB AND CMS LICENCE FOR TRADING IN FUTURES CONTRACTS

(Based on available information)

1. Calyon Financial Pte Ltd
2. Fimat Asia Pte Ltd
3. GK Goh Financial Services (S) Pte Ltd
4. HSBC Futures (S) Pte Ltd
5. Man Financial (S) Pte Ltd
6. OCBC Securities Pte Ltd
7. Ong First Tradition Pte Ltd
8. Phillip Futures Pte Ltd
9. UOB Bullion and Futures Ltd
10. DBS Vickers Securities (S) Pte Ltd