

**CONSULTATION PAPER**

**P013-2019**

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# **Requirements on Controls against Market Abuse**

**MAS**

Monetary Authority of Singapore

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# 1 Preface

1.1 This consultation paper sets out new requirements that the Monetary Authority of Singapore (“MAS”) proposes to impose on financial institutions (“FIs”) in Singapore that undertake the regulated activity of dealing in capital markets products. These new requirements aim to improve controls and facilitate investigations into cases of market abuse such as market manipulation and insider trading, to maintain a fair, orderly and transparent market.

1.2 MAS invites comments from all FIs and other interested parties.

**Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it (but not their identity), or (ii) their identity along with their whole submission, to be kept confidential, please expressly state so in the submission to MAS. MAS will only publish non-anonymous submissions. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.**

1.3 Please submit written comments by 5 September 2019 to –

Enforcement Department  
Capital Markets Intermediaries Department III  
Monetary Authority of Singapore  
Email: [CAMA\\_mailbox@mas.gov.sg](mailto:CAMA_mailbox@mas.gov.sg)

1.4 We would appreciate if you would use this [format](#) for your submission to ease our collation efforts.

## 2 Introduction

2.1 MAS and the approved exchanges conduct market surveillance of trading activities to detect misconduct that may affect the orderliness and integrity of the market. Early detection of misconduct is an important part of MAS' enforcement approach. MAS also recognises the need to have the capability to take swift action to investigate and punish serious misconduct to deter unethical and illegal behaviour.

2.2 The absence of information or the delay associated with the retrieval of information, on the identity of persons who are the beneficial owners and/or who exercise control over trading accounts have impeded investigations into market abuse. These challenges are exacerbated by changes in technology, the large number of cross border transactions and insufficient controls to detect and deter market abuse at brokerages. In the course of our investigations into suspected market abuse, we have uncovered instances of trading accounts being used without written authorisation from the account holders, or used for illicit activities such as insider trading and market manipulation.

2.3 MAS has identified four areas where requirements will be enhanced:

- (a) Ultimate beneficial owners ("UBOs") of orders and trades ("O&T") executed in omnibus accounts (known as 'Client Identification Rule');
- (b) Record-keeping of instructions received for broker-assisted O&T;
- (c) Unique client device identifier for O&T executed via mobile trading applications; and
- (d) Cash payments and payments by third parties (i.e. non-account holders) for the funding of customers' accounts.

2.4 The proposed requirements, which will be set out in a new Notice on Controls against Market Abuse, apply to licensed and exempt FIs<sup>1</sup> in Singapore that undertake the regulated activity of dealing in capital markets products. The proposed Notice will take effect 6 months from the date of issuance.

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<sup>1</sup> Exempt FI means banks, merchant banks and finance companies who are exempt from holding a capital markets services licence under section 99(1)(a), (b) and (c) of the Securities and Futures Act.

### 3 Client Identification Rule

3.1 The International Organization of Securities Commissions (“IOSCO”) has set out in the Principles on Client Identification and Beneficial Ownership for the Securities Industry that the client due diligence process is a key component of securities regulatory requirements. These principles outline key securities regulations that can be introduced to ensure that markets are fair, efficient and transparent, and to prevent market abuse. In particular, IOSCO Principle 7 highlights the importance of obtaining information identifying persons who beneficially own or control securities accounts.

3.2 There are challenges in identifying the UBO of O&T executed in omnibus accounts that are held in the name of foreign intermediaries as they are not under our regulatory purview, and the information does not reside in Singapore. These challenges are not unique to Singapore, and other jurisdictions such as the European Union (“EU”) and Hong Kong have taken steps to address them.

3.3 MAS proposes to introduce a client identification rule where FIs must establish arrangements with its clients to facilitate the provision of UBO information to MAS or any other law enforcement agency, within five business days upon request. FIs are not expected to record information on the UBO at the time of the transaction where the information is held with a foreign intermediary if it is permitted under the Notice on Prevention of Money Laundering and Countering of Financing of Terrorism SFA-N04 (“AML Notice”). However, FIs must put in place sufficient measures to comply with the client identification rule, and set out in a written agreement with the clients, the clients’ obligation to provide the UBO information upon request. The agreement should incorporate the necessary consent or waiver to enable the UBO information to be provided notwithstanding any privacy or secrecy law in the jurisdiction where the client resides or operates, where such law exists. In enforcing the rule, MAS will take into consideration whether the FI has acted in good faith and with reasonable care to comply with the requirement.

3.4 MAS notes that there could be practical difficulties in obtaining UBO information, for example, where an FI’s client does not wish to disclose the identities of the underlying clients to the FI, which could be a competitor. In such a case, it is acceptable if the FIs have agreements with their clients to provide the UBO information directly to the requesting law enforcement agency.

**Question 1.** MAS seeks comments on the client identification rule.

## 4 Records of Communication on Orders and Trades

4.1 Regulation 39(3) of Securities and Futures (Licensing and Conduct of Business) Regulations (“SF(LCB)R”) requires the holder of a Capital Markets Services licence (“CMSL”) to keep a written record of the customer’s order. In a circular dated 1 March 2011, MAS set out the expectations for telephone conversations relating to the order details and advice to be recorded.

4.2 In practice, most trading representatives enter orders directly into the FI’s order management system after receiving the O&T instructions. The communication between the person who instructed the O&T and the trading representative is usually not recorded or retained by the FIs, especially if the communication took place via personal devices such as mobile phones.

4.3 The records on O&T communication are important not only for assessing disputes with clients concerning the particulars of the trades. Such records would also constitute critical evidence in market abuse investigations into the identities of persons who instructed the O&T. In our investigations into suspected market abuse, we have come across cases where perpetrators attempted to hide their identities by giving O&T instructions for accounts which they were not authorised to operate.

4.4 MAS proposes to introduce a requirement for FIs to record all communication between their trading representatives and the person instructing the O&T in customers’ account for any capital market products, even if such communication does not result in an actual transaction. Personal electronic devices may be used if (i) the FI is able to record and retain the original communication, including instant messages, or (ii) the trading representatives perform a call back to the person who instructed the O&T on the FI’s recorded telephone line for each O&T. This requirement is broadly aligned with those in other jurisdictions, such as Australia, EU, Hong Kong and the United States. All records are to be kept for 5 years, in accordance with the record-keeping retention period under section 102(3) of the SFA.

**Question 2.** MAS seeks comments on the proposed requirement for FIs to record communication concerning O&T placed in customers’ trading accounts.

## 5 Client Device Identification

5.1 Self-directed trading via mobile applications has become more prevalent in recent years. For the same reasons behind the proposal to tighten the rules on recording O&T communication for broker-assisted trades, it is necessary for FIs’ to enhance their

capabilities to capture information that identify the individuals who place orders via self-directed trading avenues.

5.2 Each mobile application generates an alphanumeric identifier that is unique to the device on which the application is installed (“Device ID”). The Device ID differs across different operating systems. Examples of Device IDs are the Identifier for Vendors (IDFV) and Identity for Advertisers (IDFA). Mobile trading applications of several FIs are currently able to capture the Device ID.

5.3 We propose to introduce a new requirement for all FIs to capture and record the Device ID for O&T executed via mobile trading applications. As the Device IDs vary on different operating systems, we will not prescribe the specific Device ID to be recorded, but allow the FIs to customise their own systems. Publicly available documentation on source code for the Device ID can be found on the website of the respective operating platform, appended in Annex B.

**Question 3.** MAS seeks comments on the proposal to require FIs to record the Device ID of all O&Ts placed via mobile trading applications.

## 6 Register of Cash and Third Party Payments

6.1 A number of FIs currently allow payments in trading accounts to be made in cash and/or by a person who is not the account holder (“third-party payment”). Investigations into cases of market misconduct have shown that persons looking to hide the trail of illicit trading activities often exploit FI’s practices and policies on account funding.

6.2 MAS notes that there could be legitimate reasons for the use of cash or third party payments. The existing rules set out in the AML Notice are intended to mitigate money laundering and terrorist financing risks, and are consistent with the standards set by the Financial Action Task Force, as well as the rules found in other established markets.

6.3 We propose to augment the AML Notice by requiring FIs to maintain a centralised, electronic register of all payments received in cash or from third parties by the FIs into their customers’ accounts. The register must be produced to MAS or other law enforcement agency upon request. The register should contain the following information:

- (a) For all payments received in cash, the FI should record (i) the identity of the payer, including national identity number, residential address and contact number, (ii) the reason for paying in cash and (iii) the source of funds. If such cash payments are made by a third party, the FI should record (i) the relationship of the third party with the account holder, (ii)

whether the third party exercises trading authority over the account and (iii) the reason for making payment on behalf of the account holder.

- (b) For non-cash payments made by a third party, the FIs should document all available details such as mode of payment, name of counterparty bank and account holder, and conduct due diligence checks if the amounts exceed \$20,000 in a single instance or over several instances within a rolling one- month period. As part of the due diligence check, the FIs should obtain information on (i) the identity of the third party, including national identity number, residential address and contact number, (ii) the relationship with the account holder, (iii) whether the third party exercises trading authority over the account, and (iv) the reason for making payment on behalf of the account holder.

**Question 4.** MAS seeks comments on the proposal to require FIs to maintain a centralised, electronic register containing a list of all payments made in cash or by non-account holders, and the stipulated details associated with such payments.



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**Apple's Documentation**

<https://developer.apple.com/documentation/uikit/uidevice/1620059-identifierforvendor>

**Android/Google's Documentation**

[https://developer.android.com/reference/android/provider/Settings.Secure.html#ANDROID\\_ID](https://developer.android.com/reference/android/provider/Settings.Secure.html#ANDROID_ID)

